

Kentucky Department of Public Advocacy's

35th Annual Public Defender Education Conference

June 19-21, 2007

**Kentucky International Convention Center
Louisville, Kentucky**



Realizing Justice

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Let us realize the arc of the moral universe is long but it bends toward justice.

-- Martin Luther King Jr.

FILLING OUT THE CLE CARD FOR KENTUCKY:

SPONSER:	KY DEPT. OF PUBLIC ADVOCACY
ACTIVITY:	35th ANNUAL KY PUBLIC DEFENDER CONFERENCE
LOCATION:	LOUISVILLE, KY
DATE:	06/19/2007
ACTIVITY:	88755
TOTAL CLE CREDITS:	12.50
ETHICS:	6.75 HOURS (MAXIMUM AVAILABLE)

ETHICS CREDITS ARE INCLUDED IN THE TOTAL NUMBER OF CREDITS

General Conference Information

SMOKING POLICY: There will be no smoking in any of the meeting rooms or lobbies. You will only be able to smoke outside the building.

FAMILY: If you are bringing your family, they are welcome to drop in on any or all of the Conference programs if they're interested. If you have small children who would disrupt any of the learning, we ask that you not bring them to any Conference program.

EVALUATIONS: You will be given an evaluation form for each individual session each day. Please complete the evaluation form and return to the DPA staff person at the end of each session. We need your evaluative thoughts.

SOCIAL GATHERINGS: Tuesday evening there will be dinner at the Galt House, East Tower, Grand Ballroom A, at 6:30 p.m. During dinner will be presentations of the *Gideon*, *Nelson Mandela Lifetime Achievement*, *Rosa Parks*, *In Re Gault*, *Professionalism & Excellence*, *Anthony Lewis Media*, *Lincoln Leadership*, and *Furman Awards* with remarks by **Ernie Lewis**, Public Advocate, and **Jane Winkler Dyche**, KBA President-Elect. Your family is welcome. If your family would like to eat this meal, please purchase tickets at the DPA Registration Desk by 5:00 p.m.

CLE CREDITS: There are a total of 12.50 KBA CLE credits available, including 6.75 hours of KBA CLE Legal Ethics credits offered throughout the Conference to choose from. You received your CLE form in your registration packet. Please fill out the CLE form and return to the DPA Registration Desk before the close of the Conference. Kentucky uses IBM cards for reporting CLE credits (**the Activity Number for this event is 88755**). You need to know your Bar Number. If you do not know your number, ask at the DPA Registration Desk and they can give it to you. There will also be out-of-state CLE forms available at the Registration Desk for Tennessee, Indiana, and Ohio. If you need credit from another state, please let us know at the DPA Registration Desk. If the CLE card is not given to KBA within 30 days of the CLE activity, the only way they will accept it is if it is accompanied by \$10.00 per card. Conference attendees are responsible for that \$10.00 if the card is not given to Lisa Blevins by the 25th day after the Conference. See SCR 3.665(5)(e).

KBA CONVENTION: Beginning Wednesday afternoon, the 200 people contacted will be able to attend KBA's conference through Thursday afternoon. KBA's convention is held in the other building of the Convention Center, the Fourth Street entrance (between Market and Jefferson). This will enable you to receive your yearly required amount of CLEs. DPA is paying KBA to enable those DPA attorneys to attend their conference.

Ours is a government of laws, not men, John Adams said. American society is founded on the commitment to law, binding the rulers as it does the ruled. Our willingness to assure the least among us the guiding hand of counsel is a test of our American faith.

—Anthony Lewis



35TH ANNUAL KENTUCKY PUBLIC DEFENDER EDUCATION CONFERENCE
Kentucky International Convention Center, Louisville, Kentucky
June 19-21, 2007

TUESDAY, JUNE 19, 2007

12:00 p.m. - 4:00 p.m.
3:00 p.m.

CONFERENCE REGISTRATION (Registration booth is located in the Third Street/Dockside lobby Check-in to Hotel

[illegible]

WEDNESDAY, JUNE 20, 2007

ANNUAL '07	105	109	112	106	107	110	111	113	114	115	116
8:30 – 10:00 a.m.	DUI Update - Rob Riley	Defending Capital Cases - Bert Neislanik	Crawford - Ira Mickenberg	Westlaw - Susan Reale	Recent Developments in the Appellate Courts - Dannon Preston - Erin Yang	Representing a Latino Immigrant - Ivy Velez	Defending your first Sex Offense Case - Elizabeth Barber - Sue Martin	Investigation Teamwork Dynamics - Mort Smith	Ethics The Consulting Expert - Eric Drogin	Providing Effective Representation in Youthful Offender Cases - Pete Schuler - Emily Farrar-Crockett	Ethics: Quality of Life and the Huge Caseload (Time Management) - Jim Wren
10 minute break	105	109	112	106	107	110		113	114	115	116
10:10 – 11:10 a.m.	Brady - Ira Mickenberg	The Ethics of Representing Clients Competently in the Court of Public Opinion - Ed Monahan	The Admissibility of Digital Evidence - Michael Losavio	Attacking Eyewitness IDs - Glenn McCleister - Mait Browning	Writing the Persuasive Brief/ Persuasive Pleading in a Capital Case Mark Olive	The Immigration Consequences of Crime - Cori Hash	Sex Offense Registration Law & Its Implications for your Practice - Roger Gibbs - Sam Potter	Crime Scene Investigation that Can Make the Difference in Your Case - Jon Rapping	Malingering - Eric Drogin	Alternative Sentencing for Youth in Juvenile Court and Family Court Cases - Rebecca Dioreto	Ethics: Dynamics of Trial Co-Counseling - La Mer Kyle-Griffiths - Sheila Kyle-Reno
15 minute break	105 & 108										
11:20 – 11:45 a.m.	Closing: - Ernie Lewis										
Lunch	105 & 108	109	112								
1:00 – 2:30 p.m.		Investigation: Lessons from an Innocent Man - Shareef Cousin - Jon Rapping	Second Chances in the Appellate Arena - Ira Mickenberg								
15 minute break											
2:45 – 5:00 p.m.		Interviewing Skills - Mort Smith	Ethics – How Capital Cases change you. - Panel								

KBA has approved this conference for a total of 12.50 credits, including up to 6.75 hours of Ethics. The Activity Number is 88765.
NOTE: if you attend the conference Tuesday 1:00 until Wednesday 11:45, you may claim up to 6.00 KY CLE's.

THURSDAY, JUNE 21, 2007

ANNUAL '07	109	112
9:00 a.m. - 10:30 a.m.	Testifying - Mort Smith	The New Appellate Landscape Reflections After Six Months - Frank Heft and Roundtable
		Special Sentencing Considerations and Computations - Bob Hubbard
15 min Break		
10:45 a.m. - Noon	Investigator Roundtable - Diana Queen	Hot Issues on Review: Trends in State and Federal Court - John Palombi - Tim Arnold

To determine your KBA CLE credits, divide the number of minutes of programs you attend which qualify for CLE credits by 60 minutes.
 For example, 300 minutes of qualifying programs equal 5 KBA CLE credits.

Information for the KBA CLE card:

Sponsor: Ky Dept. of Public Advocacy
 Activity: 35th Annual KY Public Defender Conference
 Location: Louisville, KY
 Date: 06/19/07
 Activity Number: 88755
 Total Credits: 12.50
 If you only attended from 1:00 on Tuesday until 11:45 on Wednesday, you may claim up to 6.0 hours
 up to 6.75
 Ethics Credits:

(Ethics credits are INCLUDED in the TOTAL number of credits.)

ETHICS OPPORTUNITIES AT THE 2007 DPA ANNUAL CONFERENCE

Tuesday, June 19:

2:00 – 3:00 p.m.
Room 105

**Half a Century of Learning from Failure:
Real-life War Stories from the Trenches**

3:15 – 4:15 p.m.
Room 105

**Client Relations: Developing a Relationship that
Empowers Your Client and Keeps You on the Same Team**

3:15 – 4:15 p.m.
Room 115

**Legal Triage in District Court:
Caseload Management**

Wednesday, June 20:

8:30 – 10:00 a.m.
Room 114

The Consulting Expert

8:30 – 10:00 a.m.
Room 116

Quality of Life and the Huge Caseload

10:10 – 11:10 a.m.
Room 109

**The Ethics of Representing Clients
Competently in the Court of Public Opinion**

10:10 – 11:10 a.m.
Room 116

Dynamics of Trial Co-Counseling

2:45 – 5:00 p.m.
Room 112

How Capital Cases Change You

Presentation Summary

*A listing of our presentations and a description of the
Learning Objectives for each session follows.*

Meeting rooms are indicated in the left-hand column in italics under session times.

TUESDAY, JUNE 19, 2007

TIME / ROOM

TOPIC / SPEAKER(S) / LEARNING OBJECTIVES

1:00 – 1:45 p.m.

Room 105/108

CLE.50

Welcome & The State of Kentucky Public Defense and New Legislation

- Public Advocate, Ernie Lewis

Objectives: A review of the last year's significant events that affect the statewide public defender program in Kentucky and its assistance to over 100,000 clients.

2:00 – 3:00 p.m.

Room 105

CLE 1.00

Ethics

Half a Century of Learning from Failure:

Real-life War Stories from the Trenches

- Margaret Case, General Counsel

Objectives: We learn from our mistakes, of course. But, it's painful. Join us for an hour of learning from the mistakes of other people over the years. It's a lot less painful that way. We'll use real-life examples of screw-ups, as we examine the ethical obligations of criminal defense practitioners under the Kentucky Rules of Professional Conduct and the National Legal Aid and Defender Association's "Performance Guidelines for Criminal Defense Representation." If time permits, we'll ask participants if they want to share their own lessons learned the hard way.

2:00 – 3:00 p.m.

Room 109

CLE 1.00

Preserving Your Clients Right to Win

- Linda Roberts Horsman, Attorney, Appeals Branch

- Shannon Dupree-Smith, Attorney, Appeals Branch

Objectives: To aid trial attorneys in a proper understanding of all requirements for preservation of error at the trial level to ensure success on appeal. Special emphasis will be placed on paying attention to the record being created and the practical considerations of video appeals.

2:00 – 3:00 p.m.

Room 112

CLE 1.00

Evidence Warriors: How to win the evidence game!

- Bert Nieslanik, Attorney, Grand Junction, Colorado

Objectives: Bert Nieslanik, AKA: Warbeak, presents this topic in her usual style with music, law and fun. Come and explore innovative, creative techniques for using the rules of evidence to win.

2:00 – 3:00 p.m.

Room 106

CLE 1.00

PowerPoint in the Courtroom

- Brad Holajter, Investigator, Cynthiana
- Michael R. Rivers, Attorney, Cynthiana

Objectives:

1. To learn how to create a PowerPoint presentation and tailor it for a trial setting.
2. To view PowerPoint as a tool to enhance trial strategy and as an avenue of communication with the jury.
3. To encourage creativity in trial preparation, allowing us to stay one step ahead of the prosecution.
4. To become comfortable with what PowerPoint can do for our clients.

2:00 – 3:00 p.m.

Room 107

CLE 1.00

DUI Litigation Techniques

- Will Zevely, *Busald, Funk and Zevely*, Florence, KY
- Jerry J. Cox, Attorney, Mount Vernon, KY

Objectives: An overview of the current “science” used in the prosecution of DUI cases and techniques to challenge this through investigation, pretrial litigation, and trial.

2:00 – 3:00 p.m.

Room 110

CLE 1.00

The Medical Examiner and You: We’re Here to Help

- Gregory J. Davis, MD, State Medical Examiner, & Professor of Pathology and Laboratory Medicine, University of Kentucky College of Medicine

Objectives:

1. Understand the unbiased role of the ME and coroner in death investigation.
2. Understand the benefits and limitations of autopsy.
3. Understand cause, manner, and mechanism of death.

2:00 – 3:00 p.m.

Room 111

CLE 1.00

Forensic DNA: Trends and Legal Applications

- Dr. Michael Baird, PhD., Laboratory Director, DNA Diagnostics Center
- Kathryn McHenry, Forensic DNA Analyst, DNA Diagnostics Center

Objectives: Attendees will learn basic DNA fundamentals as it applies to forensic applications, including:

1. Forensic Case Process and DNA Reports
2. Population Genetics Principles
3. New Technologies
4. DNA Laboratory Checklist

2:00 – 3:00 p.m.

Room 113

CLE 1.00

Arson: Client Interviewing & Basic Arson Evidence Collection

- Mike Parks, Investigator, London

Objectives: To understand law enforcement techniques of interviewing our clients and proper evidence collection methods at an arson scene.

2:00 – 3:00 p.m.

Room 114

CLE 1.00

Litigating Salvation: Race, Religion, and Innocence in the Cases of Karla Faye Tucker and Gary Graham

- Melynda Price, Assistant Professor, UK College of Law

Objectives: This presentation discusses the influence of race and religion in the way media frames death penalty cases.

2:00–3:00 p.m.
Room 115
CLE1.00

Involuntary Mental Health Civil Commitments: The Basics and Beyond

– Bill Dolan, Attorney, Protection and Advocacy

Objectives:

To learn the 202A process, including the roll of the prosecutor and defense attorney, the elements, and discharge, plus some lingering issues like timing and trial commissioners.

2:00–3:00 p.m.
Room 116
CLE1.00

Verbal Crisis Intervention

- Melanie Lowe, Attorney, *Kentucky Innocence Project*

Objectives:

1. To identify the behavior levels that contribute to crisis development.
2. To identify appropriate intervention techniques for each behavior level.
3. To learn useful non-verbal techniques which can help prevent acting-out behaviors.
4. To learn to use verbal techniques to de-escalate behaviors.
5. To recognize the importance of attitude and professionalism in responding to crisis situations.
6. To identify situations where staff should remove themselves or call for assistance
7. To consider the pressures felt by some defender staff families and friends, whose loved ones are engaged in what is viewed as particularly hazardous work

3:15–4:15 p.m.
Room 105
CLE1.00
Ethics

Client Relations: Developing a Relationship That Empowers Your Client and Keeps You on the Same Team

- Jonathan Rapping, Attorney, Atlanta, Georgia

Objectives: To better understand how to develop a relationship with your client that will allow you to build trust and maximize your ability to get information you need to prepare his defense. To gain an understanding of common mistakes public defenders make that are detrimental to the attorney/client relationship and to learn tips for avoiding those pitfalls.

3:15–4:15 p.m.
Room 109
CLE1.00

**Your First Methamphetamine Manufacturing Case:
Learning by Trial and Preserved Error**

-B. Scott West, Bluegrass Regional Manager, Directing Attorney, Richmond

Objectives:

1. Developing a theory of the case and themes for the trial
2. Pre-trial Motions
3. Defending the case through each stage of the trial (voir dire, cross-examination, direct examination, use of experts)
4. Preserving Error

3:15–4:15 p.m.

Room 112

CLE 1.00

Preliminary Parole Revocation Hearings

- Hon. Nancy Barber, Chief Administrative Law Judge, Kentucky Parole Board
- Kim Hoagland, Attorney, Hopkinsville
- Panel: Don Jones, Paintsville; Katie Gilliam, London; Charlotte B. Scott, Hopkinsville; Stanley L. Chauvin III, Louisville

Objectives: To familiarize attorneys with the revocation process. To provide cites to find the regulations/statutes governing the process, as well as where to find the Dept. of Corrections Policy and Procedures. The most important aspect of the presentation will be to teach the attorneys how to be effective in the Preliminary Hearings. There will be a panel of regional and out-of-state Administrative Law Judges so that individual attendees can ask questions.

3:15–4:15 p.m.

Room 106

CLE 1.00

Recusal of Judges and Prosecutors

- Sue Martin, Attorney, Owensboro

Objectives: A summary of the pertinent provisions of the 8th and 14th Amendments, KRS 26A.015, Kentucky statutes and the Kentucky Code of Judicial Conduct that govern the disqualification of judges in the Kentucky Court of Justice and group discussion about specific problems the attendees may have encountered. For example, when should I move to recuse a judge? How is this done? Will I ever be able to practice in front of this judge again?

3:15–4:15 p.m.

Room 107

CLE 1.00

From the Brain Cell to the Prison Cell

Susan Snyder, Mitigation Specialist, *Mitigation Plus*, Lexington
Judith Humble, *Croney and Clark*, Lexington

Objectives:

1. Understand brain structures critical to management of aggression and violence.
2. Understand role of genes in the set point for aggression.
3. Understand role of childhood trauma and neglect in determining the violence/aggression set point.
4. Understand impact of Neuroscience research on “culpability.”

3:15–4:15 p.m.

Room 110

CLE 1.00

Problems in Forensic Pathology

- Gregory J. Davis, MD, State Medical Examiner, & Professor of Pathology and Laboratory Medicine, University of Kentucky College of Medicine

Objectives: Become aware of challenges in forensic pathology:

1. Logistical
2. Technical
3. Political
4. Emotional
5. Other

3:15–4:15 p.m.

Room 111

CLE1.00

DNA Hands-On Demonstration

- Dr. Michael Baird, PhD., Laboratory Director, DNA Diagnostics Center
- Kathryn McHenry, Forensic DNA Analyst, DNA Diagnostics Center

Objectives: Attendees will learning about basic DNA serology tests:

1. Presumptive and Confirmatory Tests for blood and semen.
2. Volunteers will perform actual tests as they are instructed on the relevance of these tests in a forensic DNA case.

3:15–4:15 p.m.

Room 113

CLE1.00

Litigating Race: Challenging the Venire Panel and Challenging Racial Bias in Voir Dire

- Melynda Price, Assistant Professor, UK College of Law
- Rebecca Ballard DiLoreto, Director, Post Trials Division
- Lisa Clare, Attorney, Appeals Branch
- Don Morehead, Attorney, Appeals Branch

Objectives:

1. Familiarize attendees with how to set up a challenge to a venire panel.
2. Preserving the issue at trial for appellate review.
3. The value of a statistician.
4. Sources for statistical information in lieu of expert assistance.
5. Prosecutorial devices to hide race based strikes.
6. Prosecutorial devices to conceal appeals to racial bias of seated jurors.
7. The essential steps of *Batson*.
8. Getting around the limitations of *Batson*.
9. Making your record for appellate review to expose prosecutor's use and abuse of racial bias, prejudicing your client's case.

3:15–4:15 p.m.

Room 114

CLE1.00

Basic Primer on Capital Defense Law

- Mark Olive, Attorney, Tallahassee, Florida

Objectives: A basic primer on 8th Amendment law for both Capital Appeals and Capital Post Conviction.

3:15–4:15 p.m.

Room 115

CLE1.00

Ethics

Legal Triage in District Court (Efficient District Court Caseload Management)

- Jim Wren, Attorney, Hazard

Objectives:

1. To learn various techniques to handle expeditiously a high volume of felony and misdemeanor actions in the District Courts of the Commonwealth of Kentucky.
2. To understand various duties imposed by the Kentucky Rules of Professional Conduct affecting time commitments to individual actions prosecuted in the District Courts.
3. To stress the unique differences among individual cases determining the amount of time devoted to each case.
4. To stimulate thinking regarding the efficient processing of a high volume of cases, while maintaining compassion for individual clients and zeal for protecting personal liberties.

4:00 – 5:30 p.m.

Public Advocacy Commission Meeting

Galt House, East Tower, Grand Ballroom A

4:30 – 5:30 p.m.

Storytelling at Sentencing

Room 105/108

- Bert Nieslanik, Attorney, Grand Junction, Colorado

CLE1.00

Objectives: Why we are losing steam at sentencing hearings. This talk is designed to inspire lawyers to focus on “story” at the sentencing phase of our cases. The Get Out of the Box theme comes with ideas on how to make storytelling a big part of your sentencings.

4:30 – 5:30 p.m.

Investigation: Understanding Case Theory

Room 111

- Mort Smith, Investigator, Chicago, Illinois

CLE1.00

Objectives: To provide participants with an understanding of why they are given certain investigative tasks and how to use this knowledge to best serve their clients.

4:30 – 5:30 p.m.

Kentucky Lawyer Assistance Program (KYLAP): An Overview

Room 113

- C. Houston “Hoot” Ebert, Kentucky Bar Association

CLE1.00

Objectives: To understand that KYLAP is a confidential program designed to assist members of the Kentucky legal community with substance abuse and mental health issues that affect their ability to practice law or which have the potential to affect their ability to practice law.

4:30 – 5:30 p.m.

What is Different about Appellate and Post Conviction Review in a Capital Case

Room 114

- Mark Olive, Attorney, Tallahassee, Florida

CLE1.00

Objectives: So you thought you knew how to read a record and spot issues:

- I. The Appellate View
 - A. Painfully thorough review of the record and exhibits for completeness.
 - B. Broad and creative view of what might be an issue (remember Crawford?) because you must raise persuasive issues even if they’re losers.
 - C. There are no dumb questions EVER! Ask. Your thought may lead to an issue or someone else’s thought to some issue you haven’t seen which could lead to a win.
 - D. Your relationship with the client and his/her family sets the stage for further relationships. No b.s. allowed. Trust is crucial. You may be the only one who has ever proven worthy of that trust. Live up to it.
 - E. Take the time to do it right. If you can’t, don’t do the work.
 - F. Capital work WILL change you.
- II. The Post Conviction View
 - A. Painfully thorough review of the record and ALL documents in the case.
 - B. Know the client’s file COLD. Start yesterday.
 - C. Investigation, investigation, investigation: “GET OUT OF YOUR OFFICE!” Don’t leave a stone unturned. Never underestimate the

lifesaving power of re-checking where others at the trial level have checked. Nine times out of ten, they've only checked the surface.

- D. A good team will take you far. Leave the egos out. We all bring different life experiences to the table. Value that—learn to use it to your benefit. Cherish your investigators. Most often, it is their efforts—not yours—that unearth the lifesaving facts. Include the client as part of the team. They **MUST** be intimately involved. They're telling your or your investigator or somebody things they **NEVER** wanted to tell anybody. Live up to that trust.
- E. Don't attack the trial lawyer, make him/her your friend.
- F. *Keep your friends close, but your enemies closer.* (Godfather II)
Investigation means investigating the jury, the judge, the prosecutor, the bailiff, etc. etc. You'd be surprised what nuggets can be gleaned from a little leg work.

4:30 – 5:30 p.m.

Room 115

CLE 1.00

Open Records Collection

- Susan Jackson Balliet, Attorney, Appeals Branch
- Tim Arnold, Manager, Juvenile Post Disposition Branch

Objectives: To convey:

1. An overview of Kentucky's Open Records Act, including what records are covered, & how to request them.
2. When to use Open Records instead of or in addition to discovery.
3. Timing issues.
4. How to obtain "lost" or "missing" records.
5. How to litigate under the Open Records Act.

6:00 – 6:30 p.m.

Reception

Galt House, East Tower, Grand Ballroom A

6:30 p.m.

Galt House East

Grand Ballroom A

Annual Defender Awards Banquet

Remarks from Jane Winkler Dyche, KBA President-Elect and awarding Professionalism and Excellence Award

Presentations of Awards: *Rosa Parks, Nelson Mandela Lifetime Achievement, Gideon, In Re Gault, Anthony Lewis Media, Furman, and the Lincoln Leadership Award*

WEDNESDAY, JUNE 20, 2007

8:30 – 10:00 a.m.

DUI Update

Room 105

- Rob Riley, Attorney, Louisville

CLE 1.50

Objectives: A review of the current state of DUI law and practice. Focus on caselaw from the last year, statutory changes and novel or new ideas to better represent our DUI clients.

8:30 – 10:00 a.m.

Defending Capital Cases

Room 109

- Bert Neislanik, Attorney, Grand Junction, Colorado

CLE 1.50

Objectives: Tips and techniques for capital litigators from vigorous motion practice to taking care of yourself to be able to fight another day.

8:30 – 10:00 a.m.

Recent Developments in *Crawford* and Strategies to Deal with Hearsay

Room 112

- Ira Mickenberg, Attorney, Saratoga Springs, New York

CLE 1.50

Objectives: We will work on the most recent developments in *Crawford*. The session will be oriented to the most practical of concerns - how we can actually use the new *Crawford* decision to keep out the most prejudicial hearsay and prevent trials in which the key witnesses never testify.

8:30 – 10:00 a.m.

Westlaw

Room 106

- Susan Reale, Thomson West, Government Account Manager

CLE 1.50

Objectives: Learn to make Westlaw your key to legal research. I'll start by showing you how to retrieve a document by citation or case name. Explore two fundamental but powerful search methods: Natural Language and Terms and Connectors. In addition, I will show you KeyCite®, West's essential citation research system. You will also learn MyWestlaw, a way to personalize Westlaw to meet your unique research needs. And you will see how easy it is to keep a record of — and return to — each step in your research project.

8:30 – 10:00 a.m.

Recent Developments in the Appellate Courts

Room 107

- Damon Preston, Trial Division Director

CLE 1.50

- Erin Hoffman Yang, Attorney, Appeals Branch

Objectives: In this session, trial and appellate attorneys will learn of recent published opinions likely to impact criminal defense practice.

8:30 – 10:00 a.m.

Representing a Latino Immigrant

Room 110

- Ivy Velez, Attorney, Florence, KY

CLE 1.50

Objectives: With the increase of the Latino population comes an increase in the number of Latino individuals that have to go through the criminal justice system. The Public Defender office plays a central role in this process. Our Defenders offer support to those Latino immigrants that get involved with the criminal justice system. At the same time, they are challenged by problems brought by the unknown cultural and ethnical background of these clients.

Through this presentation, we will learn that communication is only one of several issues that Defenders face when representing a Latino client. We will discuss some of those main issues. We will also learn about the basic characteristics of a Latino client and the differences among them based on their region of origin.

8:30 – 10:00 a.m.

Room 111

CLE 1.50

Defending Your First Sexual Offense Case

- Elizabeth Barber, Attorney, Owensboro
- Sue Martin, Attorney, Owensboro

Objectives:

1. Determining the Theory of the Case: Why would the child lie?
2. Investigating the (potential) lie and related motions.
3. Persuading the Jury through cross-examination and closing argument.

8:30 – 10:00 a.m.

Room 113

CLE 1.50

Investigation: Teamwork Dynamics

- Mort Smith, Investigator, Chicago, Illinois

Objectives: To impress upon participants the importance of teamwork as it relates to the defense team.

8:30 – 10:00 a.m.

Room 114

CLE 1.50

Ethics

The Consulting Expert

- Eric Drogin, J.D., Ph.D., ABPP, Louisville, KY

Objectives:

1. To explore the differences between consulting experts, testifying experts, and fact witnesses.
2. To identify the distinct array of services available from consultants at each level of legal proceedings.
3. To determine how counsel can style the consultant's involvement to the client's best advantage.

8:30 – 10:00 a.m.

Room 115

CLE 1.50

Providing Effective Representation In Youthful Offender Cases

- Peter Schuler, Chief Juvenile Defender, Louisville Metro Public Defender
- Emily Farrar-Crockett, Deputy Chief Juvenile Defender, Louisville Metro Public Defender

Objectives: To become familiar with recent changes in case law pertaining to youthful offenders. To learn how to deal successfully with the Kentucky Department of Juvenile Justice in the handling of these cases. To be provided with new practice tips and strategies to help our clients who are in juvenile and circuit court, including the utilization of expert witnesses in waiver hearings.

8:30 – 10:00 a.m.

Room 116

CLE 1.50

Ethics

Quality of Life and the Huge Caseload (Brief Intro to Time Management)

- Jim Wren, Attorney, Hazard

Objectives:

1. To implement the practice of a time management budget to maintain a high quality of life, while coping with an onerous caseload.
2. To understand various Kentucky Rules of Professional Conduct which impinge upon maintenance of a time management budget.
3. To stimulate thinking on efficient methods for processing a large number of cases in a reasonable time.
4. To stress the importance of rest and relaxation in maintaining attorney efficiency.

10:10 – 11:10 a.m.
Room 105
CLE 1.00

**Avoiding Trial by Ambush:
Raising *Brady* Issues and Getting What You Need**
- Ira Mickenberg, Attorney, Saratoga Springs, New York

Objectives: We will address the *Brady* issues, focusing on nuts and bolts ways for us to raise *Brady* issues and make sure (1) that we receive all exculpatory evidence, and (2) that we receive it in time to use it at trial.

10:10 – 11:10 a.m.
Room 109
CLE 1.00
Ethics

**The Ethics of Representing Clients Competently in the
Court of Public Opinion**
- Ed Monahan, Executive Director, Catholic Conference of Kentucky

Objectives: Learn how to ethically communicate persuasively on behalf of a client whose case is in the public arena by using the skills of anticipation, preparation, framing and bridging.

10:10 – 11:10 a.m.
Room 112
CLE 1.00

The Admissibility of Digital Evidence
Michael Losavio, Attorney, Louisville

Objectives: You will...

1. Identify facts relating to digital evidence that may impact its admissibility,
2. Apply certain rules of evidence in your analysis and argument as to admissibility of digital evidence and
3. Use the term “digital evidence” with confidence in professional and social settings.

10:10 – 11:10 a.m.
Room 106
CLE 1.00

Attacking Eyewitness IDs
- Glenn McClister, Attorney, DPA Education
- Matthew Browning, Attorney, Frankfort

Objectives:

1. Using an expert witness: learning from them, consulting with them and preparing them for direct and cross examination.
2. Developing issues throughout trial process: using motion practice to prepare for trial.
3. Discovery/Investigation: take every opportunity to learn the facts about how the identification procedure was conducted.

10:10 – 11:10 a.m.
Room 107
CLE 1.00

Writing the Persuasive Brief/Persuasive Pleading in a Capital Case
- Mark Olive, Attorney, Tallahassee, Florida

Objectives: A client’s horrible life has to be detailed even if issues related to it will get you nowhere. A sympathetic judge somewhere may give relief on something else because of the picture you paint.

Which brings us to recasting the story. One picture (the prosecution’s) was painted at the trial; that, in one sense, is why your client was found guilty and sentenced to death. You must use the record to begin to deconstruct that picture and draw a new one using the same lines. That’s where creativity comes in. Simply rehashing the trial is not enough.

10:10–11:10 a.m.
Room 110
CLE1.00

The Immigration Consequences of Crime

- Cori Hash, Attorney, Maxwell Street Legal Clinic, Lexington

Objectives:

1. To learn how to advise non-citizen defendants about the consequences of their pleas.
2. To gain a basic understanding of which crimes or types of crimes will make a non-citizen ineligible for immigration benefits and/or cause him or her to be deported.
3. To gain a basic understanding of immigrant statuses.

10:10–11:10 a.m.
Room 111
CLE1.00

Sex Offense Registration Law & Its Implications for Your Practice

Roger Gibbs, Eastern Regional Manager, London Directing Attorney

Samuel Potter, Attorney, Appeals Branch

Objectives: This session will be divided into two parts. Part A is an overview of the registration system. Part B is challenges and issues regarding the system.

1. Examine recent challenges both successful and not so successful.
2. Examine trends across the state and country.
3. Review issues that remain to be raised.
4. Review sample challenge motions.
5. Answer questions concerning the statute and its application. Include questions submitted in advance and from the audience.

10:10–11:10 a.m.
Room 113
CLE1.00

Crime Scene Investigation that Can Make the Difference in Your Case

- Jonathan Rapping, Attorney, Atlanta, Georgia

Objectives: To gain an understanding of fundamental investigation tasks we need to be doing in every case. To acquire an appreciation for how doing these tasks can win cases and how failing to do them can cost us victories.

10:10–11:10 a.m.
Room 114
CLE1.00

Malingering

- Eric Drogin, J.D., Ph.D., ABPP, Louisville, KY

Objectives:

1. To explore various components of the diagnosis and phenomenon of Malingering in forensic contexts.
2. To identify the various measures used to detect Malingering among criminal defendants.
3. To determine how counsel can explain and accommodate prior and current diagnoses of Malingering.

10:10 – 11:10 a.m.
Room 115
CLE 1.00

Alternative Sentencing for Youth in Juvenile Court and Family Court Cases

- Rebecca Ballard DiLoreto, Director, Post Trial Division

Objectives:

1. Identify what particular challenges participants are facing in securing alternative dispositions in your juvenile and family court cases.
2. Identify problem areas and some identified solutions from different geographic regions in the state.
 - a. Drug Cases
 - b. Sex Offense Cases
 - c. Status Offense cases (Contempt)
 - d. Treatment for Girls
 - e. Treatment for those age 17 to nearly 18
 - f. The Mentally Ill
 - g. Developmentally Disabled client
 - h. In patient treatment
 - i. Out patient treatment
3. How do you secure necessary funding for clients to go to these sessions?
 - a. Securing the medical card
 - b. SSI
 - c. SSDI
 - d. Out of state programs
4. How do you effectively prove to the court's satisfaction that the program will work?

10:10 – 11:10 a.m.
Room 116
CLE 1.00
Ethics

Dynamics of Trial Co-Counseling

- LaMer Kyle-Griffiths, Directing Attorney, Cynthia
- Shelia Kyle-Reno, Directing Attorney, Elizabethtown

Objectives:

1. To identify when co-counseling is mandatory
2. To learn the ethical rules pertaining to co-counseling
3. To learn effective co-counseling
4. To learn how the jury's perceptions affect strategies in co-counseling
5. To learn effective logistics in co-counseling

11:25 – 11:45 a.m.
Room 105/108

Closing

- Ernie Lewis, Public Advocate

1:00 – 2:30 p.m.
Room 109
CLE 1.50

Investigation: Lessons From an Innocent Man

Jonathan Rapping, Attorney, Atlanta, Georgia
Shareef Cousin, *Community Organizer*, Fairness For Prisoners' Families
Southern Center For Human Rights, Atlanta, Georgia

Objectives: This session will present a live example of the human tragedy that can result from our failure to critically question the State's evidence and to thoroughly investigate our cases. Participant's will meet a man who spent a decade incarcerated, much of that on death row, because his counsel didn't understand these seemingly basic lessons. Through Shareef Cousin's story, participants will learn the importance of the defense function and investigation.

1:00 – 2:30 p.m.

Room 112

CLE1.50

Second Chances in the Appellate Arena

- Ira Mickenberg, Attorney, Saratoga Springs, New York

Objectives:

1. How do you successfully reframe an appellate issue if you lost it at the state circuit court level (for a juvenile appeal) or the Court of Appeals level or the State Supreme Court?
2. How do you decide what to give up on a petition for MDR or Petition for Rehearing and what to retain?
3. What factors persuade an appellate court to reconsider an issue that a lower court already decided against you?
4. What factors persuade an appellate court to reverse a lower court decision that was favorable to you ?
5. What is essential in reframing a state criminal conviction/judgment for successful federal review?

2:45 – 5:00 p.m.

Room 109

CLE2.25

Interviewing Skills

- Mort Smith, Investigator, Chicago, Illinois

Objectives: To provide participants with the skills necessary to interview various witnesses.

2:45 – 5:00 p.m.

Room 112

CLE2.25

How Capital Cases Change You

Moderated by:

- Marguerite Thomas, Manager, Post Conviction Branch

Objectives:

1. The importance of removing your ego from the process so that you can represent the client well and work with your team.
2. Find your reason for doing the work outside of “winning.”
3. Why there is an ongoing duty to the client beyond your direct representation.
4. Building the capacity to forgive your colleagues for serious mistakes and likely occurrences of painful attacks on your person.
5. Appreciate how much you will learn from your clients and find satisfaction in the attorney/client relationship.
6. The absolute necessity of taking time for yourself and taking care of yourself.
7. Building and maintaining appropriate boundaries for your work.

THURSDAY, JUNE 21, 2007

9:00 – 10:30 a.m.

Room 109

CLE1.50

Testifying

- Mort Smith, Investigator, Chicago, Illinois

Objectives: To provide participants with the skills necessary to present their findings competently.

9:00 – 10:00 a.m.

Room 112

CLE1.00

The New Appellate Landscape: Reflections After Six Months

Moderated by:

- Frank Heft, Attorney, Louisville Metro Public Defender

Objectives:

1. What have we learned about the new KY SCT so far.
2. What have we learned about the new KY COA so far.
3. What trends have we seen in MDR grants or denials.
4. What questions have concerned the courts in oral argument.
5. Can we identify particular leanings, or favorite issues or defined concerns from the particular COA judges and the SCT jurists.
6. Have there been any changes to our practice so far, can we anticipate any in the future.

10:00 – 10:30 a.m.

Room 112

CLE 50

Special Sentencing Considerations and Computations

- Bob Hubbard, Investigator, LaGrange Post Conviction

Objectives:

1. What are the pertinent statutes and regulations that impact sentencing for our clients.
2. What are the latest twists in the law regarding violent offenders, PFOs, & enhanced offenses.
3. How can we best deal with the conflicts between our interpretation of the sentencing computations at the trial level by judge, prosecutor and defense counsel as it may later conflict with how DOC computes our client's sentence? Where should we pursue legal remedies on behalf of our clients.
4. What factors are important to remember in regards to concurrent and consecutive sentences.
5. What benefits are our clients entitled to as regards good time, educational good time or other regulations that may ameliorate the actual time served.
6. How are our C and D clients going to be impacted by remaining in the county jails rather than being sent to a state prison.
7. What charts or simple checklists should an effective trial lawyer refer to in advising a client regarding sentencing considerations and computations.

10:45 a.m. – 12:00 p.m.

Room 109

CLE 1.25

Investigator Roundtable

Moderated by:

– Diana Queen, Investigator, *Kentucky Innocence Project*

Objectives: In this roundtable session, investigators will participate in an interactive learning session. Advanced fact based investigation topics related to criminal investigations will be covered. The session will cover homicide, burglary, evidence and effective testimony, arson, and computer and technological crimes. Moderators will lead roundtable discussions centered on the completion of investigative puzzles which will be completed by the class. Handouts will be provided on each topic and investigators may choose a criminal investigative topic.

10:45 a.m. – 12:00 p.m.

Room 112

CLE 1.25

Hot Issues on Review: Trends in State and Federal Court

- John Palombi, Attorney, Capital Post Conviction Branch

- Tim Arnold, Manager, Juvenile Post Disposition Branch

Objectives:

1. To identify cases from Kentucky, the 6th Circuit Court of Appeals, or the United States Supreme Court, where a criminal conviction was reversed.
2. To apply the lessons from cases where reversals have occurred to “hot” issues currently in the pipeline.
3. To identify any other issues which have been left unresolved by courts, and which might form the basis for a future reversal.

2007 KBA Annual Convention

WEDNESDAY, June 20

12:45-1:45 p.m.

Enough: The Phony Leaders, Dead-End Movements and Culture of Failure that are Undermining Black America - and What We Can Do About It. Featuring Juan Williams. (1.0 Credit)

2:00-3:30 p.m.

Is “Enough” Enough, Too Much or Too Little? A Panel Discussion (1.5 Credits)

3:45-5:00 p.m.

Obstreperosity (1.25 Ethics)

THURSDAY, June 21

8:30-9:30 a.m.

Young Lawyers Conference Financial Planning for Young Lawyers (0.5 Ethics)

9:45-11:45 a.m.

District Court Basics for Young Lawyers (2.0 Credits)

8:30-10:30 a.m.

Human Trafficking in Kentucky: Forced Prostitution and Domestic Servitude/ Modern Day Enslavement in the Commonwealth (2.0 Credits)

10:45-11:45 a.m.

Digital Forensic Analysis and Experts: How Digital Forensics Can Help (or Hurt) Electronic Discovery (1.0 Credit)

8:30-10:30 a.m.

From Death Row to Morehouse College: Why are Courts Sentencing Innocent People to Imprisonment and Execution? (2.0 Credits)

10:45-11:45 a.m.

Right to Counsel and Criminal Justice in New Orleans: A Microcosm of the Crisis in the Foundation of Our Adversary Legal System (1.0 Credit)

8:30-10:30 a.m.

Advising Clients about ADR (2.0 Credits, incl. 1.0 *Ethics*)

10:45-11:45 a.m.

Judicial Activism and the Rehnquist Court (1.0 Credit)

8:30-9:30 a.m.

Digital Objects— The Forms, Location and Metadata of Electronic Evidence (1.0 Credit)

9:45-11:45 a.m.

Digital Practice—The Rules of Civil Procedure and the Discovery of Electronic Evidence (2.0 Credits)

2:00-3:00 p.m.

Reporters and Sources: From *Branzburg* to the Libby Case Howard Fineman (1.0 Credit)

3:15-5:00 p.m.

Young Lawyers Conference Appellate Basics for Young Lawyers (1.75 Credits)

3:15-5:00 p.m.

Young Lawyers Conference Transactions for Young Lawyers (1.75 Credits)

3:15-5:00 p.m.

Restoration of Civil Rights (Panel Discussion) (1.75 Credits)

3:15-5:00 p.m.

Professional Responsibility Update: Things Every Lawyer Should Know (1.75 Ethics)

3:15-5:00 p.m.

The Power of a Power of Attorney (1.75 Credits)

Each time a man stands up for an ideal or acts to improve the lot of others or strikes out against injustice, he sends forth a tiny ripple of hope.

— Robert Kennedy

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Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.

— Martin Luther King, Jr.

OUR NATIONAL AND KENTUCKY FACULTY BIOGRAPHICAL INFORMATION

Tim Arnold is a graduate of Knox College in Galesburg, IL, and the University of Kentucky College of Law. He has been with the Juvenile Post Dispositional Branch in Frankfort, KY since 1996, and now serves in the Branch Manager.

Dr. Michael Baird, the Laboratory Director of DNA Diagnostic Center, received his PhD. in Genetics from the University of Chicago. Dr. Baird has decades of experience in the field of DNA testing. In 1982, he was at the forefront of DNA testing as part of a team that pioneered identification through DNA and then offered it commercially. In 1987, Dr. Baird was the first DNA expert to testify in a U.S. court case and has since testified in over 600 court cases involving DNA and forensics. NBC News hired him as their on-air DNA expert during the OJ Simpson trial. He has written and published numerous articles and manuscripts in the field of DNA technology, paternity testing, and forensics. Dr. Baird joined DDC after having spent the prior 7 years as Chairman of the Parentage Testing Board for the American Association of Blood Banks (AABB). This organization oversees, sets rules and regulations, and accredits DNA paternity testing laboratories in the U.S. He has also been a member of the AABB Standards Committee for 15 years, setting the standards and guidelines for AABB accredited laboratories. Dr. Baird is currently the president of HITA, the Human Identity Trade Association. This is an organization of individuals from the DNA field who represent DNA industry to the government and the public.

Before she moved to Kentucky, **Susan Jackson Balliet** put in 15 years litigating class actions for various civil legal aid offices in California, and served for three years as the first director of Stanford Law School's clinical training office. In 1992, Balliet switched her practice to criminal appellate work, joining the Department of Public Advocacy's Appeals Branch in 1998. Since March 2000, she has supervised capital post conviction cases for the agency. Balliet's interest in expert opinion evidence began with her arguing *Fugate v. Commonwealth*, 993 S.W.2d 931 (Ky. 1999) (acknowledging the validity of DNA testing). Since then she has contributed to DPA's Evidence Manual, and presented numerous times on issues involving experts.

Elizabeth Barber is a graduate of Western Kentucky University and Salmon P. Chase College of Law. Elizabeth has been a staff attorney for the Owensboro trial office since 1999.

Hon. Nancy Barber is a graduate of the University of Kentucky and Cumberland School of Law of Samford University. Nancy began her career in Birmingham, Ala. with the law firm of *Hoagan, Smith, Alsapugh, Samples and Pratt*. They concentrated their practice in areas of personal injury litigation. Upon returning to Kentucky, Nancy worked with Fayette Co. Legal Aide, Inc., and then went to Frankfort as the Officer Head for the Secretary of Labor. She remained with the Labor Cabinet but transferred to the Special Fund in 1991. Since Oct. 1999, Nancy has been the Chief Administrative Law Judge for the Kentucky Parole Board.

Matthew J. Browning opened a solo practice in Frankfort, KY in January 2007 with a focus on criminal law. He gained his trial experience through his approximately 4 ½ years as Assistant Public Advocate with DPA's Frankfort Trial Office. He is a 2002 graduate of the University of Kentucky College of Law and has an undergraduate degree in Anthropology from Indiana University.

Margaret Case is a magna cum laud graduate of Transylvania University in Lexington. She earned her J.D. degree from the University of Kentucky College of Law. After working as a DPA appellate law clerk, Margaret left the agency for a federal district court clerkship. Then, while in private practice in Danville, she routinely handled appeals for indigent criminal defendants as a member of DPA's panel of contract lawyers. But, in 1989, Margaret returned to DPA full-time and, over the years, has worked at every level of criminal defense litigation — at trial, on direct appeal, and in post-conviction. For nine years, her practice was exclusively in death penalty defense. Currently, Margaret is General Counsel for the Department. She holds membership in the Kentucky and National Associations of Criminal Defense Lawyers. In 2004, she was DPA's *Gideon Award* recipient.

Lisa Clare graduation *summa cum laude* from Georgetown College in 1978. From there, she obtained a Master of Divinity prior to entering the University of Kentucky College of Law. She has practiced law for the past 18 years and has led workshops in the following areas of law: housing, disability, special education, juvenile, and most recently, the impact of immigration law in the practice of criminal law. She and her husband have four children and live in Shelby County.

Shareef Cousin In 1995, when Shareef was only 16 years old, a jury in racially charged New Orleans, Louisiana convicted him of killing a white tourist in the French Quarter. His death sentence was the product of a faulty investigation, gross prosecutorial misconduct, and coached eyewitness testimony by a corrupt police officer motivated by a \$10,000 reward from the local business community. At the time of the murder, Shareef was at a local community center, playing in a recreational league basketball game that was captured on videotape. In 2005, after 11 years of incarceration, Shareef was released from prison and dedicated his life to social justice, helping the voiceless and faceless among society. Shareef Cousin is a full time student at Morehouse College pursuing a dual degree in Political Science and History, while working as a Community Organizer for Fairness for Prisoners' Families, a Program of the Southern Center for Human Rights, where his mission is to help build an organized and politicized movement of families and friends of people incarcerated in Georgia to uphold the human rights of people incarcerated, reduce the number of people of prison and shift governmental and non-governmental resources from prison building to community building.

Jerry J. Cox is a sole practitioner and been practicing criminal defense law for over 37 years. He has served on the faculty of DPA's Trial Practice Institute. He is a member of the American and Kentucky Bar Associations and has served on the KBA's Unauthorized Practice of Law Committee (1993-Present), Criminal Rules Committee (1995-Present), Legislative Committee (1999-Present), Prescription Drug Abuse Task Force (2003) and as Chair of the Criminal Law Section (1994). He is a member of the Kentucky Association of Criminal Defense Lawyers; received the Presidential Award in 1995 and served as President in 1997. He is a life member of NACDL and has served on the Board of Directors since 2000. He also serves as Chairman of the NACDL Audit Committee (2001-Present). In 2003, he was recognized by the NACDL for significant contributions to the members of NACDL. He also served on the Kentucky Criminal Justice Council's Drug Strategy Committee (1999-Present), Public Advocacy Commission (1999) and the Kentucky Bar Foundation (President, 2002). Jerry Cox is certified as a Criminal Specialist by the National Board of Trial Advocacy. In 2004, he served on the NBTA Board of Examiners. In 2002, he was awarded DPA's Nelson Mandela Lifetime Achievement Award for his commitment to criminal defense. In 2003, 2004 and 2005, NACDL Presidents awarded Cox Presidents' Commendations for outstanding service to the goals and objectives of the NACDL and for outstanding service in fighting for the rights of all persons. In 2004, he received the President's Special Service Award from the Kentucky Bar Association. Cox has written and lectured extensively on criminal law issues.

Gregory J. Davis, MD, is a State Medical Examiner for the Commonwealth and served as Associate Chief Medical Examiner from 1997 – 2005. He is Professor of Pathology and Laboratory Medicine at the University of Kentucky College of Medicine, where he is director of the autopsy service, the forensic consultation service, and of resident physician education. He is also chair of the College of American Pathologists' Forensic Pathology Committee. Dr. Davis has over twenty years of experience as a forensic pathologist.

Rebecca Ballard DiLoreto began with DPA as a law clerk in 1984. She has represented clients at the trial, appellate and post conviction level. She enjoys the creativity involved in criminal defense work and the opportunities present in this work to both help others and improve the justice system. She has learned from many great criminal defense lawyers, investigators, mitigation specialists and secretaries in Kentucky through the years. She continues to learn a great deal from the new lawyers and professional staff who join DPA each year. Working as DPA's Post Trial Division Director since the creation of the division in 1997 has allowed Rebecca to see our work from a variety of perspectives. With her husband, Don, an Italian romantic, musician and pilot, Rebecca is blessed with three children, two teenagers and one near teen. They make their home in Lexington.

William Stewart "Bill" Dolan is a Staff Attorney Supervisor with the Division of Protection and Advocacy, Department of Public Advocacy in Frankfort. His practice involves assisting adult individuals with disabilities pursue legal, administrative, and other appropriate remedies. He received a B.A. degree in Business Administration from Carthage College, *magna cum laude*, and a J.D. from the Louis D. Brandeis School of Law and Education. He formerly clerked for Joseph R. Huddleston, Kentucky Court of Appeals, and practiced with *O'Bryan, Brown & Toner, PLLC*.

Eric Y. Drogin is a Fellow of the American Academy of Forensic Psychology, a Diplomat and former President of the American Board of Forensic Psychology, and a Diplomat of the American Board of Professional Psychology. Currently serving as Chair of the American Psychological Association's Committee on Professional Practice and Standards, he previously chaired the APA's Committee on Legal Issues as well as the APA's Joint Task Force with the American Bar Association. Dr. Drogin is a former President of the New Hampshire Psychological Association. He serves on the faculty of the Harvard Medical School and as a member of the Program in Psychiatry and the Law in the Department of Psychiatry at Beth Israel Deaconess Medical Center, and also serves on the faculty of the University of Louisville School of Medicine in the Department of Psychiatry and Behavioral Sciences. Dr. Drogin received his Doctor of Philosophy (Ph.D.) degree in Clinical Psychology from Hahnemann University. Dr. Drogin is a Fellow of the American Bar Foundation. His current American Bar Association service includes the ABA Advisory Panel, the Life and Physical Sciences Division (Chair), the Behavioral Sciences Committee (formerly as Chair), the Committee on Scientific Evidence, the Biotechnology Law Committee, the International Criminal Law Committee, the International Health Law Committee, the Military Justice Committee, the Science and Technology Committee, and the Committee on United States Lawyers Practicing Abroad, and formerly included the Commission on Mental and Physical Disability Law and the Committee on Scientific Misconduct. Dr. Drogin is a Member of Council of the ABA's Section of Science and Technology Law, and is also an ABA appointee to the National Conference of Lawyers and Scientists. He serves on the adjunct faculty of the Franklin Pierce Law Center, and teaches at the University of Wales as an Honorary Professor of Law. Dr. Drogin received his Juris Doctor (J.D.) degree from the Villanova University School of Law. Having authored or co-authored over 150 legal and scientific publications to date, including the American Bar Association's *Criminal Law Handbook on Psychiatric and Psychological Evidence and Testimony* (2000); *Civil Law Handbook on Psychiatric and Psychological Evidence and Testimony* (2001); *Mental Disability Law, Evidence, and Testimony* (2007); and *Science for Lawyers* (2007), Dr. Drogin has lectured extensively throughout the United States and in England, Ireland, Wales, Australia, New Zealand, and Canada. He regularly presents continuing education seminars for attorneys and mental health professionals on such topics as forensic assessment, ethics, and professional development. Dr. Drogin's multidisciplinary practice encompasses mental health law, expert witness testimony, and trial consultation.

Shannon Dupree Smith is a graduate of Western Kentucky University and the University of Louisville Brandeis School of Law. She began her legal work in private practice in Hartford, Kentucky where she concentrated her practice in domestic relations and criminal matters. She has been with DPA since 1999 (excepting a two year stint where she was a stay at home mom). Shannon is the lucky mom of Max and Sam. Shannon and her husband are also in the process of adopting a baby daughter from China.

C. Houston "Hoot" Ebert has served as Director of the Kentucky Lawyer Assistance Program (KYLAP) at the Kentucky Bar Association since 2002. Mr. Ebert received his BA from the University of Kentucky in 1961 and his JD from the Salmon P. Chase College of Law in 1966. He practiced law in Northern Kentucky until 1997, at which time he joined the Administrative Office of Court and served as Treatment Coordinator for three drug courts in Campbell and Kenton counties. His memberships include the Northern Kentucky, Kentucky, and American Bar Associations. Mr. Ebert is a recovering alcoholic and drug addict, and has been in continuous recovery since 1985.

Emily Farrar-Crockett is the Deputy Chief of the Louisville Metro Juvenile Trial Division. She graduated from Murray State University in 1997 with a B.S. in Biology. While at Murray, she was actively involved with the Calloway County Literacy Project, which helped teach illiterate, indigent persons how to read and improve basic life skills. Before going to law school, Mrs. Farrar-Crockett taught high school biology and chemistry for the Jefferson County Public School System. Mrs. Farrar-Crockett graduated from Tulane Law School in 2001. While at Tulane, she received a City of New Orleans Certificate of Merit for her representation of indigent persons as a student attorney with the Tulane Criminal Litigation Clinic. She also wrote successful appeals to the Louisiana Court of Appeals and the Louisiana Supreme Court, was a "CASA" Court Appointed Special Advocate for kids, a Schoolmates Tutor for underprivileged children, and was a member of the Tulane Inn of Court. Mrs. Farrar-Crockett began her career at the Louisville Metro Public Defender's Office in 2001. She has been a trial attorney in the Adult, Mental Health, and Juvenile Divisions. In that capacity, she has represented numerous clients in felony, misdemeanor, civil commitment, and civil contempt cases. As a result of her successful representation of her clients, she has received Walker Awards for Excellence in Advocacy. She also was elected to Associate membership in the Louis D. Brandeis Inn of Court.

Roger Gibbs is a graduate of Georgetown College and the University of Kentucky College of Law. He was a staff attorney for the Jefferson County Public Defender's office from 1986 to 1993. Since 1993, Roger has been Directing Attorney for DPA's London office and the Eastern Regional Manager. Roger is the father of two wonderful children, James and Hannah, and the husband of Teresa.

Cori Hash is an attorney with the Immigrant Rights Project at the Office of Kentucky Legal Services Programs. She works at the Maxwell Street Legal Clinic offering legal assistance to low-income immigrants. She represents clients in family-based immigration, citizenship, asylum, and other immigration legal matters. She also focuses on the issue of economic exploitation of immigrants, specifically unpaid wages and the denial of public benefits. Ms. Hash is a graduate of the University of Texas, where she received her degree in Latin America Studies, and the University of Texas School of Law. She is a member of both the Texas and Kentucky bar associations and the American Immigration Lawyers Association.

Frank W. Heft, Jr., graduated from Boston University (1972) and the University of Louisville School of Law (1976). He has been a staff attorney in the Louisville-Jefferson County Public Defender's Office since he was admitted to the Kentucky Bar in October 1976. He served as a trial attorney from 1976-1980, and has served as Chief Appellate Defender since 1980. He has argued more than 200 cases in the Kentucky Supreme Court, Kentucky Court of Appeals and the United States Court of Appeals for the 6th Circuit. He also argued the cases of *Watkins v. Sowders*, 449 U.S. 341 (1981), *Crane v. Kentucky*, 476 U.S. 683 (1986) and *Stanford v. Kentucky*, 492 U.S. 361 (1989) in the Supreme Court of the United States. Mr. Heft has also been an instructor in Criminal Procedure and the Clinical Program at the University of Louisville School of Law. He has served on the Kentucky Supreme Court's Criminal Rules Committee since its inception in 1986. Mr. Heft and Mr. J. David Niehaus co-authored, *Britt v. Commonwealth: The Kentucky Supreme Court Deciphers Legislative Intent in Juvenile Firearms Cases*, 26 N.Ky.L.Rev. 17 (1999). He was the 2004 recipient of the *Professionalism and Excellence Award* presented by the Department of Public Advocacy and the Kentucky Bar Association.

Kimberly A. Hoagland is a graduate of Austin Peay State University and the Salmon P. Chase College of Law. She was a staff attorney for the Hopkinsville Public Defender's office from 1998-2002. Since 2002, Kimberly has been in solo practice in the areas of criminal defense and family law. She has served as an Administrative Law Judge for the Kentucky Parole Board since June 2006.

Brad Holajter is a graduate of Indiana University and Syracuse University College of Law. He began his career in DPA as a Law clerk for the Maysville Trial Office in October 2004. Brad has been the Investigator in the Cynthiana Trial Office Since 2005. Brad lives in Maysville with his wife Christine and two daughters, Cailin and Sophia.

Linda Roberts Horsman is a graduate of Georgetown College and the University of Dayton School of Law. She began her legal work with Appalred in Prestonsburg and then as a staff attorney for the Legal Aid Society in Louisville, where she concentrated her practice on housing and consumer issues. After a brief stint with a private firm practicing estate planning, probate, and taxation, she came to DPA. She has now been with DPA for 6 years as an Appellate Public Advocate in the Frankfort office. She is married to Tom and they have two sons: David, who is three, and T.J., who is 10 months old.

Bob Hubbard has been with the Department of Public Advocacy since October of 1981. During his employment, he began work as a Paralegal with the Post Conviction Services Branch in the LaGrange office. Bob has been certified by the Criminal Defense Investigator Training Council, and currently works in the capacity of Investigator for the LaGrange Post-Conviction office. Over the years, Bob has worked extensively with prison and sentencing issues, mitigation, and alternative sentencing. Bob is also a regular contributor to *The Advocate*, and a presenter or assistant during DPA sponsored training.

Judith Humble is an LCSW with 20 years of experience in treating survivors of childhood trauma and victims of domestic violence. She is currently the Clinical Director of *Croney and Clark, Inc.*, an organization providing wrap-around services for at-risk children and adolescents. Clients served by this agency have emotional, behavioral, and academic problems resulting from trauma. Her professional history also includes 12 years as Clinical Director for the Behavioral Medicine Network, a non-profit organization offering statewide Employee Assistance Programs and Managed Mental Health services in Kentucky. Over the past few years, Judith has developed a passionate interest in learning about the Brain and its role in shaping human behavior. She strongly believes that field of Neuroscience is ushering in a knowledge revolution that will significantly alter our future conceptualization and treatment of aggression and violence. In her leisure time, she is a devotee of Ballroom Dancing and Argentine Tango. She also loves to travel, especially to Chicago and New York.

La Mer Kyle-Griffiths started her career in the Department of Public Advocacy's Paducah Office in 1999, then a staff attorney in the Maysville Trial Office, then an attorney with the Capital Trial Branch, and since December 2004 has been the directing attorney for the Cynthiana office. She is a graduate of the University of Kentucky and the University of Dayton School of Law. She has worked as a Coordinator for Teen Court in Paducah and has worked to create better alternatives for juveniles and Spanish speakers in Cynthiana, Paducah and Maysville.

Shelia Kyle-Reno is a graduate of Wright State University and the University of Dayton School of Law. She began her career with the Department Of Public Advocacy in the Bullitt county office, moved to the Owensboro trial office, and is now the Directing Attorney of the Elizabethtown trial office. Before coming to the Department Of Public Advocacy, Shelia was Executive Director of Dayton Legal Aid, in private practice, Regional Director for AFSCME (a state employee's labor union), and Deputy Safety Director for the city of Columbus, Ohio.

Ernie Lewis grew up in Missouri, the son of a Baptist minister and a school teacher. He has two children, Ben, a graduate of Chase Law School now studying for the South Carolina bar, and Rachel, who has completed her freshman at Kenyon College, and is on leave from the University of Chicago after spending 2006 working as an Americorps volunteer. He resides in Frankfort, Kentucky. Ernie received his undergraduate degree from Baylor University in 1969, a Masters of Divinity from Vanderbilt University in 1973, and a *Juris Doctoris* (J.D.) from Washington University in 1977. He has been with the Department of Public Advocacy since he was admitted to the bar in 1977 in several different capacities, including appellate lawyer, local assistance branch manager, directing attorney of the Richmond Trial Office, and Regional Manager for the Central Kentucky Region. Since 1985, he has been on the faculty of the National College of Criminal Defense located at Mercer Law School in Macon, Georgia. He is on the faculty of the National Defender Leadership Institute as well as the NLADA's Nuts and Bolts of Defender Leadership. He is serving as Chair of the American Council of Chief Defenders during 2006-2007. He was named Kentucky Public Advocate by Governor Patton in October of 1996, and again in 2000. He was appointed to a third term by Governor Fletcher in 2004. He has served as a member of the Governor's Task Force on Domestic Violence and Sexual Assault, the Department of Juvenile Justice Advisory Board, the Board of the Kentucky Association of Criminal Defense Lawyers, the Board of the Appalachian Research and Defense Fund, the Governor's Criminal Justice Response Team, the Kentucky Criminal Justice Council, the Kentucky Corrections Commission, the Chair of the Corrections/Committee Based Sanctions Committee of the Criminal Justice Council, and the Governor's Drug Summit. He also served on the Advisory Board of the International Centre for Healing and the Law in Kalamazoo, Michigan from 2003-2006. He has testified on indigent defense issues before Task Forces in Georgia, North Carolina, Texas, and Louisiana. In 2000, he was named Outstanding Lawyer by the Kentucky Bar Association.

Michael Losavio is a Kentucky lawyer with an interest in electronic and digital systems, though he has increasing difficulty adapting to each new generation of cellular telephones. He works with the Department of Justice Administration and the Department of Computer Engineering and Computer Science at the University of Louisville in developing teaching and training in these areas.

Melanie Lowe is a graduate of Marshall University and the University of Kentucky College of Law. She has worked with DPA in the Elizabethtown and LaGrange Trial Offices. Since 2005, she has been a staff attorney with the Kentucky Innocence Project.

Sue Martin received her B.A. in English from Wellesley College in Wellesley, Massachusetts, her M.A. in German from Washington University in St. Louis, Missouri, and her J.D. from the Rutgers School of Law in Newark, New Jersey. She joined the Department of Public Advocacy in 1996. She worked in DPA's Capital Post Conviction Branch for eight years before transferring to the Owensboro Trial Office in 2004.

Glenn McClister is a Staff Attorney with DPA's Education and Strategic Planning Branch. He was an attorney in the Somerset office for nine years, covering district, juvenile, and circuit court in Russell County. In addition to coaching at Faubush and presenting at the Annual Conference, Glenn has trained public defenders in Missouri and Pennsylvania as well.

Kathryn McHenry, Forensic DNA Analyst, earned her B.A. in Molecular Biology from Berea College, and her post-graduate studies in Molecular and Cellular Biology at the University of Cincinnati College of Medicine were focused on cancer biology. She has completed training as a forensic DNA analyst at DNA Diagnostic Center and is proficient in DNA casework and expert testimony. In addition to her formal training in DNA analysis, Ms. McHenry has trained both law enforcement and legal professionals in Crime Scene Evidence Collection and Forensic Serology in numerous workshops and seminars.

Ira Mickenberg is an appellate defense lawyer, defender trainer and consultant from Saratoga Springs, NY. Ira has designed, directed and taught trial, appellate, and post-conviction training programs for defender organizations throughout the nation. He has also represented defendants in the United States Supreme Court, the U.S. Courts of Appeal, and the highest courts of several states. Ira has been certified as an expert witness in federal courts on the subject of effective assistance of appellate counsel, and has taught criminal law, criminal procedure and appellate advocacy at American University School of Law, New York Law School, the University of Dayton School of Law, and Williams College. During the month of August, Ira shuts down his practice, and can be found in the clubhouse at Saratoga thoroughbred racetrack.

Ed Monahan was a Kentucky public defender from 1976-2004. He is now Executive Director of the Catholic Conference of Kentucky, which represents the Catholic Church in matters of public policy (including criminal justice, Medicaid, automatic restoration of voting rights for ex-felons), serving as the liaison to the executive and legislative branches of government.

Don Morehead is a graduate of Austin Peay State University and St. Thomas University School of Law, Miami, FL. At Austin Peay, Don played varsity football and received a BS in both Philosophy and Political Science. While at St. Thomas, he was a Merit Scholar and a Dean's Fellow. He was formerly a staff attorney with the Trial Division in the Murray Office. He currently is with the Appeals Branch. Don's wife is a social worker employed by the Kentucky Cabinet for Family and Children Services. They have two adult daughters and reside in Louisville.

Bert Nieslanik currently works for the Office of Alternate Defense Counsel. She spent 11 years at the Colorado Public Defender's Office and 3 years in private practice in Grand Junction, Colorado. She teaches at the National Criminal Defense College, Western Trial Advocacy Institute, New York Defenders Institute, Indiana Public Defenders Council's Trial Advocacy Program. Bert has participated in programs and workshops around the states on various topics in Criminal Defense practice. Currently, her favorite pastimes are volunteering at a local alternative high school as a mock trial coach and raising money for her rural fire department.

Mark Olive has been practicing criminal law and specializing in capital defense since 1978. He has represented defendants in capital cases at all levels from trial through federal habeas. After leaving his teaching position at the University of North Carolina College of Law in Chapel Hill, he moved to Florida where he founded and served as director of the Volunteer Lawyers Resource Center, the nation's first capital representation resource center. Mark also served as executive director of the Georgia Appellate Practice and Educational Resource Center, served as director of the Virginia Capital Representation Resource Center, and was the chief assistant and litigation director of Florida's Office of the Capital Collateral Representative. Mark has argued, been counsel of record, co-counsel, and counsel for amici curiae in many capital cases in the United States Supreme Court including, *Strickler v. Greene*, 119 S.Ct. 136; *Buchanan v. Angelone*, 118 S.Ct. 757 (1998); *Lambrix v. Singletary*, 520 U.S. 518 (1997); *Gray v. Netherland*, 518 U.S. 152 (1996); *Felker v. Turpin*, 518 U.S. 651 (1996); *Herrera v. Collins*, 506 U.S. 390 (1993); *Mu 'Min v. Virginia*, 500 U.S. 415 (1991); *Darden v. Wainwright*, 477 U.S. 168 (1986). He has represented death sentenced persons in countless state post-conviction and federal habeas corpus proceedings in Alabama, California, Florida, Georgia, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Now in private practice in Tallahassee, Florida, Mark has served as Habeas Assistance and Training Counsel since the project's inception in 1996.

John Palombi is a 1983 graduate of Oberlin College and a 1987 graduate of DePaul College of Law. He has been a licensed attorney since 1987, practicing in Illinois until moving to Kentucky in 1997. He has served as a staff attorney for an appellate court, was a commercial litigation associate at a Chicago law firm, was an assistant appellate defender for the Office of the State Appellate Defender in Springfield, Illinois, and has also worked as an attorney for the Illinois Department of Insurance.

Mike Parks, CCDI, CFEI, CFII, is currently employed with the Office of Public Advocacy as a criminal investigator. His past and present activities / investigations of various types include major to minor criminal cases, arson, personal injury, automotive accidents, clandestine employee surveillance and evaluations. For 7 years he was a deputy sheriff. He has been a firefighter since 1971 and is at present an active Arson Investigator / Firefighter for the West Knox Volunteer Fire - Rescue in Corbin, Ky., and for the Woodbine Volunteer Fire - Rescue, Woodbine, Ky.. Mike is a member of the International Association of Arson Investigators and the National Association of Fire Investigators. He is certified by the National Association of Fire Investigators as: Certified Fire and Explosion Investigator (CFEI) and Certified Fire Investigation Instructor (CFII), IFSAC (International Fire Service Accreditation Congress), Certified Firefighter I & II, IFSAC Certified Hazardous Materials Awareness and Operations levels. Kentucky Fire Commission Certified Firefighter, & level I Ky. Certified Fire Service Instructor. Mike was certified by the Criminal Defense Investigation Training Council as Board Certified Criminal Defense Investigator (CCDI) October 2001, and presented a Meritorious Service Award in August 2002 by the CDITC. One of the recipients of the OPA Furman award in June 2003 as a member of the Osborne defense team. Mike is a Carry Concealed Deadly Weapons Instructor for Kentucky. He has received methamphetamine training by various agencies, actively teaches Firefighter safety classes related to methamphetamines and other topics, and has hundreds of hours training in the fire and rescue service.

Samuel N. Potter graduated from Eastern Kentucky University with a B.A. in economics in 2000 and took his J.D. from Brandeis Law School at the University of Louisville in 2003. He began working for DPA as a law clerk in 2002. He accepted a full time position in the Appeals Branch in 2003 and has worked in that capacity since then. Outside the practice of law, his main interest lies in theology, which he studies at The Southern Baptist Theological Seminary. He is married to the most beautiful woman in the world, Rebecca, and has two prized children, Andrew and John.

Damon Preston is a full-time baseball fan who happens to spend his days working as the Trial Division Director for the Department of Public Advocacy. After attending Red Sox games while at Harvard Law School, Damon split his time between the Yankees and Mets when he was at the Criminal Appeals Bureau of the Legal Aid Society in New York City. Since returning to Reds country in 1997, Damon has worked in the Richmond DPA trial office, directed the Paducah and Harrison DPA trial offices, and was Appeals Branch Manager from December 2004 to May 2007. He lives in Georgetown (conveniently an hour from Great American Ballpark) with his wife Amy and daughters Abbie and Marissa.

Melynda Price joined the UK College of Law in 2006 as an Assistant Professor. She teaches in the areas of torts, immigration, law and social science and environmental law. Her research focuses on race and citizenship, the politics of crime and punishment and the role of law in the politics of race and ethnicity in the U.S. and its borders. In 2006, Professor Price completed a doctorate degree in Political Science from the University of Michigan. Her dissertation entitled, *At the Cross: Race and Religion in the Politics of the Death Penalty Among African Americans*, is an analysis of the impact of race and religion on African American attitudes on the death penalty. In addition to her degree in political science, she also earned a J.D. from the University of Texas School of Law in 2002, and completed her undergraduate studies in Physics at Prairie View A&M University in 1995. Her most recent publication, *Litigating Salvation: Race, Religion, and Innocence in the Cases of Karla Faye Tucker and Gary Graham*, was published in the University of Southern California Review of Law and Social Justice. She is a native of Houston, Texas.

Diana Queen is an investigator for the Department of Public Advocacy serving with *The Kentucky Innocence Project*. Prior to her role in the *Kentucky Innocence Project* she worked with the Capital Trial Branch, and Post Conviction Branch investigating death penalty cases. Diana is a board certified criminal defense investigator. She is a National Advisory Board Member for the CDITC, the National Innocence Project National Advisory Council Member, and is on the 2004-2005 DPA Defender Council. In 2004, Diana received the National Investigator/Philosophers Award, for outstanding contributions to National Criminal Defense education and training. Diana has received the distinguished *Rosa Parks Award* in 2004, for her exemplary service to the poor. She serves in volunteer positions in her community and is a member of the Woodford County Human Rights Commission. Diana serves on the executive committee for *Francisco's Farm* Invitational Fine Art and Craft Show, and a member of the Midway Woman's Club. She is a graduate of Midway College, the Kentucky State Police Academy, and holds specialized certifications from the FBI and DEA. Diana is currently pursuing a post bacularette degree in Public Policy and Administration. During her time with the Kentucky State Police, she served as a trooper and detective and worked special investigations. Diana has approximately 15 years of experience in law enforcement and related fields of Criminal Justice.

Jonathan Rapping is the Chief of Training for the Orleans Public Defenders and has been instrumental in the rebuilding of that office in the wake of Hurricane Katrina. Before joining the Orleans Public Defenders, he was the first Training Director for the Georgia Public Defender Standards Council. In that capacity he developed the GPDSC Honors Program, designed to recruit young public defenders to offices throughout the state and to provide them with the training and support needed to help transform indigent defense representation in those jurisdictions. Prior to that, he was the Training Director for the Public Defender Service for the District of Columbia. Mr. Rapping has designed training programs and supervised new lawyers for the past seven years. He has been a public defender for the last eleven years and has tried a wide variety of cases, both adult and juvenile. Mr. Rapping was an adjunct professor of trial advocacy at Georgetown University and serves as a visiting professor with Harvard's Trial Advocacy Workshop. He has also presented at the National Legal Aid and Defender Association Annual Conference and the Arizona Public Defender Association Annual Conference, and has served on the faculty of the National Institute of Trial Advocacy, the Kentucky Department of Public Advocacy Litigation Persuasion Institute, the Kentucky Department of Public Advocacy Defender Management Institute, the Washington Defender Association Trial Advocacy Training, the National Defender Training Project's Public Defender Trial Advocacy Program, and NLADA's Leadership and Management Program. Mr. Rapping received a J.D. from the George Washington University School of Law, a M.P.A. from the Woodrow Wilson School at Princeton University, and a B.A. from the University of Chicago. Mr. Rapping was recently awarded a Soros Fellowship to design and implement the Southern Public Defender Training Center, a training center for public defender offices throughout the South. In August 2007, he will join the faculty of Atlanta's John Marshall Law School.

Susan Reale was born in Louisville, KY and graduated from Davidson College, in Davidson, N.C., with a B.A. *Cum Laude* in English. She spent her entire junior year on a Davidson study abroad program in Wuerzburg, Germany, where she lived in an international dorm, was enrolled in the University of Wuerzburg and took all her classes in German. After graduating from college, she spent a year in Hokota, Japan teaching English to Japanese junior high school students. She was the only Caucasian in her town. After her experiences in Japan, Susan traveled for six months with a friend around the world to such places as New Zealand, Australia, Bali, and Java in Indonesia, Korea, Thailand, Vietnam, Singapore, Japan, and then to Greece, Italy, Germany, and the U.K., before returning to the States. Susan then immediately enrolled in law school at the University of Kentucky, and received her J.D. in 1999. She was recruited by Bass, Berry & Sims, which is a large, full-service firm in Nashville, where she practiced law for two years in the Commercial Litigation section. She joined Thomson West as a Government Account Representative in April 2001, and was promoted in January 2003 to a Government Account Manager. Susan married in October 2003 and that is when her name changed from Beale to Reale! She used to reside in Nashville until May of 2005, when she and her husband relocated to Louisville. They became proud parents of a little girl in March 2006. Susan manages and trains the Westlaw government accounts in both Tennessee and Kentucky

Rob Riley joined DPA as a trial attorney in 1982, after graduating from the University of Tennessee. He served the Department as the field services director and then as the Northern Regional Trial Manager as well as the Directing Attorney of the LaGrange Trial Office. Rob retired from DPA in 2005 and currently is in private practice in LaGrange. He has served on the Board of Directors of KACDL. Rob participates extensively in training, having been a frequent seminar lecturer and has been a TPI faculty member. Rob served as a departmental resource on issues involving DUI and is the editor of the *DUI Trial Practice Manual* published by DPA and updated yearly. Rob argued *Commonwealth v. Raines* and *Commonwealth v. Wirth*, both DUI decisions before the Kentucky Supreme Court.

Michael R Rivers graduated from University of Dayton School of Law in 1999. He joined the Department of Public Advocacy in 2000 in the Paducah Office. Michael has spent the past two years working in the Cynthiana trial office.

Peter L. Schuler is a 1972 graduate of Vanderbilt University and a 1975 graduate of the Brandeis School of Law. He has served as a trial attorney with the Jefferson County Public Defender's Office since 1976. Since 1982, his practice has been concentrated in the area of juvenile law and mental health law. In 1983, he became the Chief of his office's Juvenile and Mental Health Division. During his career, he has served on numerous committees and with other groups having the goal of improving the quality of juvenile justice and the mental health system in Kentucky. Currently, he is a member of the Department of Juvenile Justice's Prevention Counsel, the Jefferson County Family Court Advisory Board, and the Kentucky Criminal Justice Council's Juvenile Justice Committee. He has participated in attorney training for the Kentucky Bar Association and the Department for Public Advocacy with respect to juvenile law and mental health issues. He was the 1999 recipient of the Department for Public Advocacy's *In Re Gault* Award, which recognizes excellence in advocacy in the area of juvenile law. He co-authored the chapter on "Juvenile Law and Psychiatry" in the "Handbook of Child and Adolescent Psychiatry" (John Wiley, 1998), Paul Adams, M.D., editor.

Smith, Mortimer "Mort" Smith, M.A., is an Illinois Licensed Private Detective. He specializes in criminal defense investigations and cases involving civil rights violations. Mr. Smith is a consultant to criminal defense investigators and attorneys on matters concerning criminal defense investigations. He is the co-founder and instructor of the Certified Criminal Defense Investigation Program at DePaul University. Mr. Smith teaches trial preparation investigation to 2nd and 3rd year law school students at the Center for Justice in Capital Cases/DePaul University College of Law and Bluhm Legal Clinic/Northwestern University College of Law. Mr. Smith has been an investigator for over 20 years. He has provided investigative services for hundreds of defendants locally and nationally. He has provided investigative services for many citizens who were abused and otherwise wronged by police officers. He is the former Chief Investigator for the Cook County Public Defender's Murder Task Force and former Chief Investigator for the Illinois Capital Resource Center (now the Capital Litigation Division) of the Office of the State Appellate Defender. In 1993, Mr. Smith was selected to be the Chief Investigator for the Office of the Inspector General/DCFS where he developed the investigation unit that investigates wrongdoings by employees of that agency. Mr. Smith has been a faculty member for the Clarence Darrow Death Penalty College since 2003. Additionally, Mr. Smith is the Chair of the Investigator Division of the Illinois Association of Criminal Defense Lawyers (IACDL) and writes a quarterly column in the IACDL newsletter discussing issues surrounding criminal defense investigations.

Susan Snyder, L.C.S.W., is president and owner of MitigationPlus, LLC. Her work as a Mitigation Specialist in Capital Death Penalty trials began 13 years ago. She has worked on over 40 capital trials, plus a number of less egregious trials. Susan has 24 years of private clinical practice. Her specialization is in Mitigation, with the Plus in Mitigation Plus.com being that of a total of 37 years of the clinical treatment of disturbed children, adolescents, and dysfunctional families in public school system, residential settings and treatment facilities. She is devoted to her work and cause as a Mitigation Specialist.

Iversy (Ivy) Velez is an attorney from San Juan, Puerto Rico. She graduated from the University of Puerto Rico with a major in Economics, and got a Juris Doctor Degree at the Law School of the InterAmerican University of Puerto Rico. She is currently admitted to the practice of law in Puerto Rico, Washington D.C., and Kentucky. She moved with her family to the Commonwealth of Kentucky in 1994, but arrived to the Northern Kentucky area in 1998. Since then she has been a resident of Florence, Kentucky, where she also has her office of legal practice. Due to the amazing increase of Hispanics into the Northern Kentucky area, she saw a need to address their needs for which got involved in activities and with organizations that could help to develop programs specifically address to the Hispanic community. Through a program from Northern Kentucky University, she joined Lt. Tim Chesser from the Florence Police Department to establish the very successful Latino Police Academy Program. This program educates Hispanics to understand the differences in culture, and to learn about the rules and customs of their adopted area of residence. She also volunteers with different non-profit organizations to provide legal defense and interpretation services pro bono. She translates into Spanish publications from different non-profit organizations and is often called as speaker upon diversity issues as it pertains to Hispanics. Her main goal in life is keep giving her best to bridge gaps between Hispanics and Americans.

B. Scott West – Recently named the Regional Manager for the Bluegrass Region, Scott was the Directing Attorney for Murray Field Office for five years, and a staff attorney in the Hazard Office for three years. Scott has learned how to handle methamphetamine cases literally through “trial and error.” A graduate of the University of Kentucky Law School (1988), and Vanderbilt University (1985), Scott practiced for ten years at Texaco Inc., in Houston, Texas, before joining DPA in 1999. He is married to Beverley and father to Hannah, 9. They live in Richmond.

Jim Wren is a graduate of the University of Richmond and the University of Virginia Law School. Following graduation, he served two judicial clerkships, the first in Washington, DC, and the second for the Hon. Eugene E. Siler, Jr., in London, KY. Thereafter, he was in private practice for almost 20 years. After 11 September 2001, he was mobilized by the U.S. Navy, serving first in Italy and then in Bahrain. While in Bahrain, CDR Wren became interested in time management issues for persons carrying a heavy workload, and he brings his wartime training and experience to DPA.

Erin Hoffman Yang is a Staff Attorney with the Appeals Branch, and has been with the Appeals Branch from starting as a law clerk in 2004. She is a graduate of Eastern Kentucky University and University of Louisville’s Brandeis School of Law. She lives in Louisville with her husband, Robert.

Will M. Zevely is a 1972 graduate of Chase Law School and a partner in the Florence, Kentucky law firm of *Busald, Funk and Zevely*. From 1972-83 he served as the Boone and Gallatin public defender. He has literally tried hundreds of DUI cases since 1972. He is one of the preeminent DUI litigators in Kentucky, presenting to a variety of Kentucky groups on DUI including KATA, KBA, KACDL, and many local Bars. He has an undergraduate degree in chemistry which gives him an extra edge in the intricacies of the breathalyzer. As a member of the Ohio Bar, he has practiced regularly under Ohio’s *per se* law. He is a charter board member of KACDL and writes a regular CUI column for their newsletter. He has co-authored, *Kentucky Driving Under the Influence Law* with District Judge Stan Billingsley, the only complete analysis of Kentucky’s DUI law. ■

Preparation is still the greatest technique for winning.

-- Larry Pozner

KENTUCKY PUBLIC ADVOCACY'S 2007 AWARD RECIPIENTS

GIDEON AWARD: TRUMPETING COUNSEL FOR KENTUCKY'S POOR

In celebration of the 30th Anniversary of the U.S. Supreme Court's landmark decision in *Gideon v. Wainwright*, 372 U.S. 335 (1963), the *Gideon* Award was established in 1993. It is presented at the Annual Conference to a person who has demonstrated extraordinary commitment to equal justice and who has courageously advanced the *right to counsel* for the poor in Kentucky. Clarence Earl Gideon was denied counsel and was convicted. After his hand-written petition to the U.S. Supreme Court, he was acquitted upon retrial where he was represented by counsel.

- 1993 **J. VINCENT APRILE, II**, DPA acting General Counsel
- 1994 **DANIEL T. GOYETTE**, Executive Director/Chief Public Defender, and the Louisville-Jefferson County Public Defender's Office
- 1995 **LARRY H. MARSHALL**, Assistant Public Advocate in DPA's Appellate Branch
- 1996 **JIM COX**, Directing Attorney, DPA's Somerset Office
- 1997 **ALLISON CONNELLY**, Assistant Clinical Professor, UK, former Public Advocate
- 1998 **EDWARD C. MONAHAN**, Deputy Public Advocate
- 1999 **GEORGE SORNBERGER**, DPA Trial Division Director
- 2000 **JOHN P. NILAND**, former DPA Central Regional Manager
- 2001 **ANN BAILEY SMITH**, Chief of Adult Trial Division, Louisville-Jefferson County Public Defender's Office
- 2002 **TERESA WHITAKER**, Directing Attorney, Columbia Office
- 2003 **ROB SEXTON**, DPA Owensboro Directing Attorney
- 2004 **MARGARET CASE**, DPA Appeals Branch Manager
- 2005 **JAY LAMBERT**, Chief of Capital Trial Division, Louisville Metro Public Defender's Office
- 2006 **KATE DUNN**, Circuit Court Staff Attorney, Fayette County Legal Aid
- 2007 **JAY BARRETT**, DPA Trial Division Director

ROSA PARKS AWARD: FOR ADVOCACY FOR THE POOR

Established in 1995, the *Rosa Parks* Award is presented at the Annual DPA Public Defender Conference to the non-attorney who has galvanized other people into action through their dedication, service, sacrifice and commitment to the poor. After Rosa Parks was convicted of violating the Alabama bus segregation law, Martin Luther King said, "I want it to be known that we're going to work with grim and bold determination to gain justice... And we are not wrong.... If we are wrong justice is a lie. And we are determined...to work and fight until justice runs down like water and righteousness like a mighty stream."

- 1995 **CRIS BROWN**, Paralegal, DPA's Capital Trial Branch
- 1996 **TINA MEADOWS**, Executive Secretary to Deputy, DPA's Education & Development
- 1997 **BILL CURTIS**, Research Analyst, DPA's Law Operations Division
- 1998 **PATRICK D. DELAHANTY**, Chair, Kentucky Coalition Against the Death Penalty
- 1999 **DAVE STEWART**, Department of Public Advocacy Chief Investigator, Frankfort, KY
- 2000 **JERRY L. SMOTHERS, JR.**, Chief Investigator, Louisville-Jefferson County Public Defender's Office
- 2001 **CINDY LONG**, Investigator, Hopkinsville
- 2002 **PEGGY BRIDGES**, Mitigation Specialist, Paducah
- 2003 **CINDY DOWNS**, Louisville-Jefferson County Public Defender's Office
- 2004 **DIANA QUEEN**, Investigator, Capital Trial Branch
- 2005 **JESSIE LUSCHER**, Administrative Specialist, Post Conviction Branch
- 2006 **BOB HUBBARD**, Investigator, LaGrange Post Conviction
- 2007 **ALICE HUDSON**, Office Support Assistant II, DPA Frankfort

NELSON MANDELA LIFETIME ACHIEVEMENT AWARD

Established in 1997 to honor an attorney for a lifetime of dedicated services and outstanding achievements in providing, supporting, and leading in a systematic way the increase in the right to counsel for Kentucky indigent criminal defendants. Nelson Mandela was the recipient of the 1993 Nobel Peace Prize, President of the African National Congress and head of the Anti-Apartheid movement. His life is an epic of struggle, setback, renewal hope and triumph with a quarter century of it behind bars. His autobiography ended, "I have walked the long road to freedom. I have tried not to falter; I have made missteps along the way. But I have discovered the secret that after climbing a great hill, one only finds that there are many more hills to climb... I can rest only for a moment, for with freedom come responsibilities, and I dare not linger, for my long walk is not yet ended."

- 1997 **ROBERT W. CARRAN**, Attorney, Covington, KY, former Kenton County Public Defender Administrator
- 1998 **COL. PAUL G. TOBIN**, former Director of the Louisville-Jefferson County Public Defender's Office
- 1999 **ROBERT EWALD**, Chair, Public Advocacy Commission; President, Louisville-Jefferson County Public Defender Corp.
- 2000 **JOHN M. ROSENBERG**, A.R.D.F. Director, Public Advocacy Commission Member
- 2001 **BILL JOHNSON**, Frankfort Attorney, *Johnson, Judy, True & Guarnieri*, Public Advocacy Commission Member
- 2002 **JERRY COX**, Attorney, *Clonz & Cox*, Mt. Vernon, Kentucky
- 2003 **DAVE NORAT**, Director, Law Operations Division
- 2004 **W. ROBERT LOTZ**, Attorney, Covington
- 2005 **SENATOR GERALD A. NEAL**
- 2006 **ROBERT G. LAWSON**, Professor, University of Kentucky College of Law
- 2007 **LYNDA CAMPBELL**, DPA's Bluegrass Regional Manager and Richmond Directing Attorney

IN RE GAULT AWARD: FOR JUVENILE ADVOCACY

This Award honors the person who has advanced the quality of representation for juvenile defenders in Kentucky. It was established in 2000 by Public Advocate, Ernie Lewis and carries the name of the 1967 U.S. Supreme Court case that held a juvenile has the right to notice of charges, counsel, confrontation and cross-examination of witnesses and to the privilege against self-incrimination.

- 1998 **KIM BROOKS**, Director, N. Ky. *Children's Law Center, Inc.*
- 1999 **PETER L. SCHULER**, Chief of the Juvenile Division, Louisville-Jefferson County Public Defender's Office
- 2000 **REBECCA B. DiLORETO**, Post-Trial Division Director
- 2001 **GAIL ROBINSON**, Juvenile Post-Disposition Branch Manager
- 2002 **PATTI ECHSNER**, Deputy Chief of the Juvenile Division, Louisville-Jefferson County Public Defender's Office
- 2003 **RAMONA BOWLING**, Juvenile Staff Attorney, Fayette County Legal Aid
- 2004 **TRACI HANCOCK**, Assistant Public Advocate, DPA Pikeville
- 2005 **TOM GRIFFITHS**, Maysville, Directing Attorney
- 2006 **TIM ARNOLD**, Manager, Juvenile Post Disposition Branch
- 2007 **LAMER KYLE-GRIFFITHS**, Cynthia, Directing Attorney

PROFESSIONALISM & EXCELLENCE AWARD

The *Professionalism & Excellence Award* began in 1999. The President-Elect of the KBA selects the recipient from nominations. The criteria is the person who best emulates Professionalism & Excellence as defined by the 1998 Public Advocate's Workgroup on Professionalism & Excellence: prepared and knowledgeable, respectful and trustworthy, supportive and collaborative. The person celebrates individual talents and skills, and works to insure; high quality representation of clients, and takes responsibility for their sphere of influence and exhibits the essential characteristics of professional excellence.

- 1999 **LEO G. SMITH**, Deputy Chief Public Defender, Louisville-Jefferson County Public Defender's Office
- 2000 **TOM GLOVER**, DPA Western Regional Manager
- 2001 **DONALD J. MEIER**, Chief of Adult Trial Division, Louisville-Jefferson County Public Defender's Office
- 2002 **ERNIE LEWIS**, Public Advocate, Department of Public Advocacy
- 2003 **ANDREA BRIMM**, Administrative Specialist, Elizabethtown
- 2004 **FRANK W. HEFT, JR.**, Chief Appellate Defender, Louisville Metro Public Defender's Office
- 2005 **ROB RILEY**, Northern Regional Manager and LaGrange Trial Office Directing Attorney
- 2006 **RICHARD CHAPMAN**, DPA Information Resource Branch Manager
- 2007 **MARCIA ALLEN**, DPA Human Resource Branch Manager

ANTHONY LEWIS MEDIA AWARD:

Established in 1999, this Award recognizes in the name of the *New York Times* Pulitzer Prize columnist and author of *Gideon's Trumpet* (1964), the media's informing or editorializing on the crucial role public defenders play in providing counsel to insure there is fair process which provides reliable results that the public can have confidence in.

- 1999 **JACK BRAMMER**, *Lexington Herald Leader*, March 5, 1999 article, "The Case of Skimpy Salaries: Lawyers for poor make little in Ky." AND **DAVID HAWPE**, Editorial Director, and **The Courier Journal** for their history of coverage of counsel for indigent accused and convicted issues from funding to the death penalty.
- 2000 **ROBERT ASHLEY**, Editor, *The Owensboro Messenger*
- 2001 **JOEL PETT**, Editorial Cartoonist, *Lexington Herald-Leader*
- 2002 **SARA SHIPLEY AND JIM ADAMS**, *The Courier Journal*
- 2003 **DEB YETTER**, *The Courier Journal*
- 2004 **LOUISE TAYLOR**, *Lexington Herald-Leader*
- 2005 **SHAWN HOPKINS**, *Appalachian News Express*, and **ANNE THROWER**, *Paducah Sun*
- 2006 **DAN MODLIN**, Western Public Radio, *WKU*, and **BURTON SPEAKMAN**, *Bowling Green Daily News*
- 2007 **PAUL LONG**, *The Kentucky Post*

FURMAN CAPITAL AWARD

Established in 2000 by Public Advocate Ernie Lewis, it honors the person who has exhibited outstanding achievements on behalf of capital clients either through litigation or other advocacy. William Henry Furman's name appears in the landmark decision, *Furman v. Georgia*, 408 US 346 (1972) which abolished capital punishment in the nation for four years. Furman was a 26 year old African-American who had mental limitations and who finished the 6th grade. Today, Furman lives and works in Macon, Ga.

- 2000 **STEPHEN B. BRIGHT**, Director for the Southern Center for Human Rights, Atlanta, Georgia
- 2001 **MARK OLIVE**, Attorney, Tallahassee, Florida, Habeas Assistance and Training Counselor
- 2002 **KEVIN McNALLY**, Attorney, *McNally & O'Donnell*, Frankfort, KY
- 2003 **THE LARRY OSBORNE TRIAL DEFENSE TEAM: GAIL ROBINSON, JIM NORRIS, TIM ARNOLD, ROGER GIBBS, DENNIS BURKE, MIKE PARKS, CATHY BOWMAN, AND ROBIN WILDER**
- 2004 **BETTE NIEMI**, DPA Capital Trial Branch Manager
- 2005 **THE JUVENILE DEATH PENALTY EFFORT**
- 2006 **MARGUERITE THOMAS**, Manager, Post Conviction Branch
- 2007 **NEAL WALKER**, New Orleans Public Defender's Office ■

Be proud of yourself when you take the time to help another defense lawyer with their problem. Be prouder when another defense lawyer takes the time to help you. The sharing of strengths is what distinguishes the criminal defense bar.

— Larry Pozner

CRIMINAL JUSTICE LEGISLATION OF THE 2007 GENERAL ASSEMBLY

By Margaret Case, General Counsel

The following is a review of criminal justice legislation passed during the 2007 General Assembly. We hope that it is helpful to you. However, we encourage you to consult the statutory language under appropriate circumstances.

The effective date of this new legislation will be “the first moment of Tuesday, June 26, 2007.”

The 2007 session of the Kentucky General Assembly was a “short session.” In odd-numbered years, the legislators meet for only thirty working days, as opposed to sixty days in even-numbered years.

Although nearly 800 bills were introduced during this most recent short session, a significant number of the criminal justice proposals never got as far as a committee hearing. This article covers those that made it all the way through the process and were signed into law by Governor Ernie Fletcher.

Senate Bill 88: Prescription Drugs

This bill was touted as a way to stop abuses by online, out-of-state pharmacies and by the people in Kentucky who obtain controlled substances from such pharmacies. In actual fact, the new law goes much further than that. The following provisions are those that are likely to have direct impact on the criminal justice system.

KRS 218A.140 deals with fraudulent practices involving prescriptions. The bill creates two new fraudulent practices, each of which, (like the practices already listed in the existing statute), is a Class D felony for a first offense and a Class C felony for a subsequent offense:

1. “No person shall knowingly obtain or attempt to obtain a prescription for a controlled substance without having formed a valid practitioner-patient relationship with the practitioner . . . from whom the person seeks to obtain the prescription.” The bill includes a definition of “practitioner-patient relationship,” and the definition requires the practitioner to have conducted at least one “good faith prior examination.” There is also a definition for “good faith prior examination.”
2. “No person shall knowingly assist a person in obtaining or attempting to obtain a prescription in violation of this chapter.”

Under the new law, Criminal Conspiracy to commit any Chapter 218A offense will carry the same penalty as the completed offense would carry. Under existing law, the equivalent penalty provision was limited to trafficking offenses.

There are two new provisions that enhance penalties for subsequent offenses:

1. KRS 218A.202 - Intentional failure of a controlled substances dispenser to transmit data to KASPER - a subsequent offense will be a Class D felony.
2. KRS 218A.202 - Intentional unauthorized disclosure of KASPER data, or obtaining KASPER data outside of a bona fide specific investigation – a subsequent offense will be a Class C felony.

A new section of KRS Chapter 218A will create three new Class D felonies, each of which rises to a Class C felony for a subsequent offense:

1. Criminal possession of a medical record with the intent to unlawfully obtain a controlled substance,
2. Theft of a medical record with intent to violate Chapter 218A, and
3. Criminal falsification of a medical record for the purpose of obtaining or attempting to obtain a controlled substance with intent to violate Chapter 218A.

The definition of “prescription drug” is expanded to include a drug which, under federal law, must be labeled with either of the following notations: “RxOnly” or “Rx.”

KRS 315.320 is amended to provide that a person or pharmacy will be guilty of a Kentucky Class C felony if they are not licensed by Kentucky and they knowingly communicate with someone in Kentucky to (a) fill or refill a prescription drug, or (b) deliver, cause, allow, or aid in the delivery of a controlled substance, imitation controlled substance, counterfeit substance, or prescription drug to the person in Kentucky.

The asset forfeiture statute, KRS 218A.420, is amended to permit law enforcement to sell seized property for its cash value, with the proceeds being distributed 85% to the agency or agencies that seized the property and 15% to the attorney general or to the Prosecutors Advisory Council for deposit on behalf of the prosecutor(s) who participated in the forfeiture proceeding. The attorney general is to promulgate regulations governing expenditure of the funds. Any law enforcement agency that seizes property for forfeiture must (a) adopt policies that are substantially in compliance with the Department of Criminal Justice Training’s model policy and (b) have one or more officers trained in asset forfeiture. All of this notwithstanding, an agency may retain or sell any forfeited vehicle that it seized and then, if sold, the proceeds stay with that agency. The trial court makes the call on how money or

property should be allocated between or among multiple entities involved in joint operations.

Senate Bill 65: Sex Offender Registration

The legislature has expanded the list of information that a sex offender must provide to the registry, with criminal penalties for the failure to do so. After the effective date, KRS 17.500(6) will require an offender to register his or her “electronic mail address and any instant messaging, chat, or other Internet communication name identities.”

Note, also that Senate Bill 43, the bill on human trafficking, (which is covered below in this article), amends KRS 17.500 by extending the sex offender registration requirement to persons who are convicted of human trafficking that involved commercial sexual activity with a victim under 18.

House Bill 191: Medical Parole Medical Treatment of Jail Inmates

As originally introduced, this bill dealt only with medical parole of prisoners. In the waning hours of the session, however, additional provisions were attached via amendment, in an effort to begin addressing the fiscal crises facing local governments because they house so many inmates in their detention facilities and because medical costs are so high.

KRS 439.3405 allows the possibility of early parole for a prisoner with one of the terminal or very serious medical conditions listed in the statute. Legislators heard testimony about prisoners who have died before the bureaucratic processing of their medical parole could be completed. New provisions in that statute will set out notice and hearing procedures that include timelines. For example, the notice that must be given to victims and law enforcement officials in cases involving Class A, B, and C felons is changed to 15-30 days. (Under KRS 439.340, the normal notice time is 45-90 days.)

New sections are being added to KRS Chapter 441, (“Jails and County Prisoners”). These new sections will permit local facilities to ask the Department of Corrections to accept transfer of, and to take responsibility for the medical treatment and care of, an inmate with medical needs. DOC is to promulgate administrative regulations governing the process. Another new section will require that, except in certain circumstances, local facilities must use DOC’s contract pharmacy plan and DOC’s contract medical, dental, and psychological care access plan. And, the new law will explain the interplay of various medical cost coverages that might exist in a particular case, (such as the inmate’s own insurance, DOC’s contracts for care access and drugs, and medical coverage contracts held by local entities themselves).

Senate Bill 43: Human Trafficking

A new offense will be codified in KRS Chapter 529, “Prostitution Offenses.” The new crime of human trafficking will be committed in one of three ways:

1. By intentionally forcing someone to do work of economic or financial value, or
2. By intentionally forcing someone to provide services, (with “services” being defined as an ongoing relationship in which one person performs activities under the supervision of, or for the benefit of, the other), or
3. By intentionally subjecting someone to commercial sexual activity through the use of force, fraud, or coercion, except that, if the trafficked person is younger than 18, there need be no force, fraud, or coercion. “Commercial sexual activity” is defined. Also, another definitional provision states that “(f)orce, fraud, or coercion may only be accomplished by the same means and methods as a person may be restrained under KRS 509.010,” (which is in the definition section of the chapter on “Kidnapping and Related Offenses).

This new human trafficking crime is a Class C felony, except that it is elevated to a Class B felony if it involves serious physical injury to the trafficked person. Also, if the victim is under 18, the penalty is enhanced by one class. So, if a victim under 18 sustains serious physical injury, the case could be charged as a Class A felony.

Under an amendment to KRS 17.500, the requirement of sex offender registration is extended to persons who are convicted of human trafficking, when the offense involved commercial sexual activity with a victim under 18. “Commercial sexual activity” is defined.

Likewise, KRS 439.3401 is amended. The list of “violent offenders” is expanded to include persons who have been convicted of human trafficking, when the offense involved commercial sexual activity with a minor victim.

KRS 532.043 is amended to impose a five-year, post-release period of conditional discharge on a person convicted of human trafficking, when the offense involved commercial sexual activity. This mandate is not limited to cases in which the victim was underage.

Also created is the new crime of promoting human trafficking. It is committed in one of three ways:

1. By intentionally benefiting financially, or receiving anything of value, from knowing participation in human trafficking, or
2. By using any means to recruit, entice, harbor, transport, provide, or obtain another person, knowing that the person will be subject to human trafficking, or
3. By attempting to do any of the things listed in #2 above.
4. KRS 506.120(3) is amended to include human trafficking in the list of offenses that can underlie a criminal syndicate charge.

There are currently three degrees of promoting prostitution in KRS Chapter 529. This new legislation combines them into a single degree, which will be a Class A misdemeanor, unless the accused was involved in a prostitution business or

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enterprise involving two or more prostitutes, in which case it will be a Class D felony.

Human trafficking and promoting prostitution are added to the list of cases in which, under KRS 531.330, any person who appears to be younger than 18 shall be presumed to actually be younger than 18. A defendant may prove that he or she reasonably believed in good faith that the person was older.

And, KRS 532.045 is amended to prohibit probation and sentence suspension for a person convicted of (a) human trafficking, when the offense involved commercial sexual activity, or (b) promoting prostitution, or (c) criminal attempt to commit either of those offenses.

The importuning statute, KRS 510.155, is expanded to include human trafficking, where that offense involves commercial sexual activity. "Commercial sexual activity" is defined.

There are several provisions designed to protect a victim after the trafficking offense is over. For example, a new section of KRS Chapter 431 will prohibit a human trafficking victim from being incarcerated pending trial for an offense arising out of the human trafficking situation, unless incarceration is found to be the least restrictive alternative. Also, a privilege is created in KRS Chapter 422, "Evidence and Lost Records," for confidential communications between a victim and a "trafficking victim counselor," and that term is defined.

KRS 413.249 sets the limitation period for a civil action for recovery of damages resulting from childhood sexual assault. Senate Bill 43 expands the definition of "childhood sexual assault" to include human trafficking, when the offense involved commercial sexual activity. "Commercial sexual activity" is defined.

Under KRS 421.350, a court may permit a child witness to testify at a location outside the courtroom and outside the presence of the defendant in certain cases. Senate Bill 43 expands the list of such cases, to include prosecutions for human trafficking, promoting human trafficking, and promoting prostitution.

Senate Bill 111: Jury Service

KRS 29A.100 is amended to add: "The judge shall excuse a mother who is breastfeeding a child or expressing breast milk from jury service until such time as the child is old enough that the mother is no longer breastfeeding the child."

Senate Bill 153: Court Security Officers

New provisions in KRS Chapter 15, ("Officer Certification and Training"), and in KRS Chapter 70, ("Sheriffs, Constables, etc."), will relate to court security officers. The new statutes will provide a comprehensive scheme for the officers' qualification, training, certification, and duties. They will also prescribe the due process required before certification can be

revoked. Provision is made for taking into account the training already received by current court security officers, as well as a time frame within which current officers must comply with the new requirements.

Provision of certified court security officers will be a responsibility of the county sheriff.

A court security officer will be prohibited from patrolling the roads, issuing traffic citations except for parking tickets around his or her court facility, performing general law enforcement duties other than court security, and taking action outside the immediate area of his or her court facility, except when transporting prisoners.

The new law will also amend KRS 15.380 to require certification of Commonwealth's detectives employed under KRS 69.110.

Senate Bill 68 - Motor Vehicle Operator Must Provide Insurance

KRS 304.39-080 requires that the owner of a vehicle registered or operated in the state must carry insurance on the vehicle or must provide security by qualifying as a self-insurer. Prosecutors testified to legislators about what they perceived as a loophole in existing law. They described a pair of roommates, each of whom owned an uninsured car, but each of whom always drove the other roommate's car instead of his own, because the law did not require a car's operator to have insurance.

The statute has now been amended. After the effective date, every owner or operator must provide a contract of insurance or provide security by qualifying as a self-insurer. The penalty remains a \$500-1,000 fine and/or up to 90 days in jail for a first offense, with increased penalties for subsequent offenses.

Senate Bill 104: Crisis Intervention Training for Law Enforcement Staff

An amendment to KRS 210.365 will require the Department for Mental Health and Mental Retardation Services to work with other specified agencies in the development of a 40-hour training curriculum based upon "best practices for law enforcement intervention with persons who may have a mental illness, substance abuse disorder, mental retardation, developmental disability, or dual diagnosis." The stated goals are "to reduce injuries to officers and citizens, to reduce inappropriate incarceration, to reduce liability, and to improve risk management practices for law enforcement agencies."

The bill includes a list of topics that must be covered in the curriculum. It specifies the qualifications required of trainers. And, it sets out a timetable for the implementation of this training.

Senate Bill 126: Peace Officer Power of Arrest

The current version of KRS 431.007 gives some police officers, as well as all sheriffs and their full-time deputies, the power to

arrest in jurisdictions other than their own, when their assistance has been requested by law enforcement agencies in the other jurisdictions. This new legislation makes a few changes. In the instance of police officers and deputy sheriffs, the new legislation limits this expanded arrest power to those individuals who are “certified pursuant to KRS 15.380 to 15.404.” (The certification requirement does not apply to sheriffs.) And, the bill deletes the requirement that a deputy sheriff must be full-time in order to have such expanded arrest powers.

House Bill 280: Offenses Involving Conduct at Funerals

For the second session in a row, the General Assembly has addressed this topic. This time, the legislators amended KRS 525.055 and KRS 525.155 to specify that the time period, during which a person can commit first-degree disorderly conduct involving specified death rituals or commit interference with a funeral, extends from one hour prior to the event until one hour following its conclusion. This bill also repeals two of the three types of behavior that, under current law, constitute interference with a funeral.

Senate Joint Resolution 48: KASPER

This legislation requires the Health and Family Services Cabinet to immediately enter into reciprocal agreements with other states relative to the Kentucky All Schedule Prescription Electronic Reporting system, and to take all steps necessary for allowing KASPER users to have real-time access to the system and its capabilities.

Senate Bill 83: New Speed Limits

Under an amendment to KRS 189.390, the transportation secretary is authorized to increase speed limits to 70 miles per hour on specified segments of highway. In addition, a new speed limit of 15 miles per hour is set for “off-street parking facility(ies) offered for public use, whether publicly or privately owned.”

House Bill 94: Meth Clean-up

A new section of KRS Chapter 224, Subchapter 1, will establish standards and procedures for the cleanup of properties contaminated by methamphetamine production, with clean-up contractors to be certified, bonded, insured, and registered with the Environmental and Public Protection Cabinet. Law enforcement will be required to notify the relevant health department upon becoming aware of a contaminated property, after which the health department is responsible for protection of the public through posted warning notices and such.

KRS 198A.040 is amended to require that the Kentucky Housing Corporation establish a program of assistance for persons of lower and moderate incomes, to help defray costs of meth assessment and decontamination services. But participation in the program is not available to convicted felons or to anyone the corporation finds to be responsible for the property’s contamination.

House Bill 82: Record-keeping Requirements for Metal Dealers

Pursuant to KRS 365.250 in its current form, certain vendors, collectors, and dealers must keep a register of copper wire and cable purchases, and must make that register available for inspection by any peace officer at any reasonable time. Violations of the law are punished by fines and/or jail sentences. The new legislation expands this law, by covering any copper metal and by requiring that such purchases must be reported within 24 hours to certain law enforcement officials, without those officials having made any request for inspection of records. Penalties remain unchanged.

House Bill 358: Peace Officer Certification and Training Transportation of Inmates to Court Appearances

KRS 15.382 will provide that a bad conduct discharge from any branch of the United States armed forces disqualifies a person from becoming certified as a peace officer. KRS 15.380-15.404 are amended to include a list of causes for which a peace officer’s certification may be revoked after a hearing. Changes are made to the various certification categories of peace officers under KRS 15.386 and KRS 15.392. KRS 15.404 provides for what happens if a peace officer fails to complete basic training or annual in-service training. For example, if there are extenuating circumstances beyond the officer’s control, extensions of time can be made available.

Under an amendment to KRS 18A.202, Kentucky State Police employees will be permitted to participate in the state employee suggestion system, whereby awards are made for suggestions that save the state money or improve state service.

A new section of KRS 197 will require that a party requesting the attendance of a state prisoner for a court appearance in a civil action must pay the cost of the inmate’s transportation, including the state mileage rate and the estimated cost of corrections staff salaries. This will not apply to parties who have been determined by the court to be indigent within the meaning of KRS Chapter 31 or other applicable law.

House Bill 114: Jail Canteen Accounts

KRS 441.135 permits local jailers to maintain canteens for inmates. A 2007 amendment to the statute will specify how much money each jail, (depending upon the size of its inmate population during the preceding fiscal year), must have in its jail canteen account. There is an exemption for counties containing an urban-county government or a consolidated local government.

House Bill 78: Certified Peace Officers

Commonwealth detectives employed under KRS 69.110 and county detectives employed under KRS 69.360 are added to the list of persons who may be certified as peace officers if their employing agencies request such certification. The bill amends KRS 15.380.

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House Bill 23: Emergency Medical Treatment of Assistance Dogs

A new section of KRS 258.500 is created: "Emergency medical treatment shall not be denied to an assistance dog assigned to a person regardless of the person's ability to pay prior to treatment." (The term "person" covers persons with disabilities as defined in KRS 210.770, as well as trainers of assistance dogs.) Violations are punished by a fine of \$250-1,000 and/or 10-30 days in jail.

House Bill 273: County Law Libraries

KRS 172.100 requires that each county seat must have a county law library, located by the fiscal court in the courthouse or a building adjacent to the courthouse. Under this new legislation, a fiscal court could opt to locate the county law library "in the local public library, or in a building where sessions of the District or Circuit Court are regularly held." The bill also specifies that counties may provide online legal resources.

Senate Bill 144: Reorganization of the Justice & Public Safety Cabinet

The Justice and Public Safety Cabinet has been operating under Executive Orders for some time now, awaiting the formal enactment of Governor Fletcher's plan for organizing the state's justice-related agencies. With passage of Senate Bill 144, the Cabinet's structure and functions are codified, rather than being in force merely by virtue of an Executive Order.

Agencies added to the newly named "Justice and Public Safety Cabinet" are: the Office of Drug Control Policy, the Office of Legislative and Intergovernmental Services, the Office of Management and Administrative Services, the Office of Public Safety Training, the Department of Kentucky Vehicle Enforcement, the Department of Public Advocacy, and the Office of Investigations, which is limited to investigating only matters that are internal to the Cabinet. The bill also includes a listing of the divisions within each of the Cabinet's departments.

The Department of Public Advocacy, ("DPA"), is attached to the Cabinet for administrative purposes only. The new statute specifies that:

1. Unlike the Cabinet's other commissioners, who report to the Secretary, the Public Advocate reports instead to the Public Advocacy Commission,
2. The Cabinet has no control over DPA's information technology, equipment, and use unless granted access by court order,
3. The Secretary may "direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet except laws and functions vested in the Department of Public Advocacy,"
4. DPA is not one of the Cabinet's "criminal justice agencies" that must share data with the Kentucky Unified Criminal

Justice Information System and with the Administrative Office of the Courts,

5. The Cabinet's Office of Investigations may be used to investigate matters inside DPA only when such investigation would have "no prejudicial impact upon a person who has an existing attorney-client relationship with the Department of Public Advocacy," and
6. One member of the Public Advocacy Commission shall be the executive director of the Cabinet's Office of Legislative and Intergovernmental Services, (rather than the executive director of the Criminal Justice Council, since the bill also abolishes the executive director position, as described later in this article).

Other provisions of interest in the 466-page bill include:

1. Extremely significant changes to the Kentucky Criminal Justice Council, including:

- a. A change in its purpose and function –

deleting such matters as:

advising and making recommendations "for long-range planning regarding all elements of the criminal justice system"

disseminating information on criminal justice issues and crime trends

recommending changes in the law necessary to address problems identified in local communities relating to gangs

providing technical assistance to all criminal justice agencies

reviewing and evaluating proposed criminal justice legislation

and substituting:

"The council shall undertake such research and other activities as may be authorized or directed by the secretary of the Justice and Public Safety Cabinet or the General Assembly."

- b. Changes to the Council's membership, weighting it more heavily as a political group than as a cross-section of diverse interests –

addition of:

the Cabinet Secretary, who will be a full member instead of only an *ex officio* member

the Deputy Cabinet Secretary, who will serve as deputy chair

two members selected by the Speaker of the House

two members selected by the Senate President

the Commissioner of the Kentucky State Police

deletion of:

the House Judiciary Committee chair
the Senate Judiciary Committee chair
a crime victim selected by the Governor
a victim's advocate selected by the Governor
a college/university professor specializing in
criminology, corrections, or similar discipline,
selected by the Governor
the president of the Kentucky Sheriffs' Association
a person selected by the Fraternal Order of Police
the president of the Kentucky Association of Chiefs
of Police
a member of the Prosecutors Advisory Council, chosen
by the council
the Chief Justice, or a jurist selected by the Chief
Justice
a member of the Kentucky Jailers' Association selected
by the association's president
a member of the Circuit Clerks' Association
three criminal law professors, one each from UK, UofL,
and Chase, selected by the Governor
a district judge selected by the Chief Justice
a circuit judge selected by the Chief Justice
a Court of Appeals judge selected by the Chief Justice
a representative from an organization dedicated to
restorative principles of justice involving victims,
the community, and offenders
an individual with demonstrated commitment to youth
advocacy, selected by the Governor
the executive director of the Commonwealth Office of
Technology

c. Provision for meetings only upon the call of the chair,
rather than (i.) regular meetings at least quarterly and (ii.)
special meetings at the request of the Governor or a majority
of the members

d. Elimination of the Council's full-time executive director

2. Changes to the Kentucky State Corrections Commission,
including:

a. Significant changes in its membership –

addition of:

the Cabinet Secretary (or designee)
the DOC Commissioner (or designee)
the Deputy Commissioner of DOC's Office of Adult
Institutions
the Executive Director of the Cabinet's Office of
Legislative and Intergovernmental Services (or
designee)
an additional circuit judge appointed by the Chief
Justice, (for a total now of two, rather than one)
a practicing attorney appointed by the Governor
two additional service providers from the field of
mental health, substance abuse treatment, or

vocational and educational training, appointed by
the Governor, (for a total now of four, rather than
two)

a person, appointed by the Governor, qualified to
express the views

of organized labor

a person, appointed by the Governor, qualified to
express the views

of business and industry

three at-large members appointed by the Governor

deletion of:

the Criminal Justice Council's executive director, (since
that position is being abolished, as reported earlier in
this article)

b. Creation of a Parole Board Nominating Committee, a
process for soliciting nominees for vacancies, and a
process for submission of candidates to the Governor

c. Empowering the Commission and its individual members
to inspect any state penal institution and advise the DOC
Commissioner about their findings; empowering the
Commission or a majority of its members to have full
access to the grounds, buildings, books, and records of
an institution, as well as empowering them to subpoena
witnesses, take proof, or hear testimony under oath
relating to an institution.

3. Changes related to vehicle enforcement staff — For
example, under a new section in KRS Chapter 15A, the
Governor or Cabinet Secretary can authorize such staff to
enforce all state laws and regulations, rather than just those
related to motor carriers, highways, and driving. Provision
is also made for such staff to exercise their powers outside
of their usual jurisdictions under a long list of specified
circumstances. But, their primary responsibility remains
“the enforcement of federal, state, and local motor carrier,
and for-hire carrier laws, administrative regulations, and
ordinances.”

4. A requirement that a local government, in order to share in
the distribution of funds from the Law Enforcement
Foundation Program fund, must have a written policy and
procedures manual on domestic violence, including
procedures for 24-hour access to protective orders,
procedures for enforcement of court orders or relief when
protective orders are violated, procedures for timely and
contemporaneous reporting of adult abuse and domestic
violence to CFC, and matters relating to victim rights,
assistance, and service. ■

WHERE ARE THE HANDOUTS?

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http://dpafontf6/intranet/default.php

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